

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

NOTICE TO CONTRACTORS

INVITATION FOR BIDS

The REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE invites sealed written proposals for the **SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT** ("Project"), located in the Civic Plaza Redevelopment Project Area, on the north side of Santa Clara Street, between Fourth and Fifth Streets, San Jose, California (the "Site"). The Project includes, but is not limited to: removal and excavation of asphaltic concrete paving and soils; placement of gravel and associated drainage improvements; and related site work.

FILING OF BIDS

All bid proposals must be filed on or before **2:00 p.m., Pacific Time, Thursday, March 5, 2009**, at the Redevelopment Agency of the City of San Jose, 200 East Santa Clara Street, 14th Floor Tower, San Jose, California 95113, Attention: Bill Ekern, Director of Project Management, as set forth in the specifications, at which time and place all bids will be opened publicly and read aloud. Bids received after that time will not be accepted. All bid proposals must be enclosed in an envelope clearly marked as "Bid for the Santa Clara Street Lot / Amgen Drainage Improvements Project".

Hand-delivered bids must be placed in the Bidder's Box located at the main reception desk at the Redevelopment Agency, 200 East Santa Clara Street, 14th Floor Tower, San Jose, California, no later than the time set forth above. Bids sent by regular or certified mail must be received by the Agency at the above-referenced address no later than the time set forth above. All bids must be enclosed in an envelope which is marked clearly as "Santa Clara Street Lot / Amgen Drainage Improvements Project".

Each bid must be accompanied by either a certified check, cashier's check, or a bidder's bond in the sum of not less than 10% of the aggregate of the total bid including all add alternatives. Checks shall be made payable to "The Redevelopment Agency of the City

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of San Jose". Bonds shall be executed by a surety possessing a valid certificate of authority issued by the California Department of Insurance and shall name the Redevelopment Agency of the City of San Jose as beneficiary.

CONTRACT DOCUMENTS/PLANS AND SPECIFICATIONS

Instructions to Bidders and Contract Documents, including plans and technical specifications, may be purchased on or after February 12, 2009 at the Redevelopment Agency of the City of San Jose, 200 East Santa Clara Street, 14th Floor Tower, San Jose, California 95113, 408-535-8500 for a non-refundable charge of Twenty Dollars (\$20.00) per set. Checks must be made payable to "The Redevelopment Agency of the City of San Jose". It can also be downloaded at no charge from The Redevelopment Agency of the City of San Jose's website, www.sjredevelopment.org/opportunities.htm, listed under "Invitation for Bids". Prospective bidders obtaining bidding documents from the website may fax a request to the Redevelopment Agency at (408) 292-6755 to be placed on the "Planholders List". Request should include company name, contact person, telephone and fax numbers and email address. All known plan holders will receive any Addenda issued for this Project.

Bidders will have fully inspected the Project Site in all particulars and become thoroughly familiar with the terms and conditions of the Instructions to Bidders, and contract documents including plans, specifications and local conditions affecting the performance and/or costs of the work prior to submitting their bid proposal.

PRE-BID MEETING

Two pre-bid meetings will be held on **Thursday, February 19, 2009, at 2:00 p.m.** and **Thursday, February 26, 2009, at 2:00 p.m.** at the Redevelopment Agency of the City of San Jose, 200 East Santa Clara Street, 14th Floor Tower, San Jose, California. Attendance at these pre-bid meetings is not mandatory. A site visit may follow the pre-bid meetings. Requests for interpretations shall be directed to the Agency at the address set forth in the Instructions to Bidders.

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NONDISCRIMINATION / NONPREFERENTIAL TREATMENT

The Nondiscrimination / Nonpreferential Treatment requirements of Chapter 4.08 of the City of San Jose Municipal Code apply to this Project.

PREVAILING WAGES

Attention is called to the fact that this is a Public Work subject to Labor Code §1771. Not less than the general prevailing rate of per diem wages and the general prevailing rates for holiday and overtime work must be paid on this Project. Copies of the prevailing rate of per diem wages are on file with the City of San Jose Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor Tower, San Jose, California 95113, (408) 535-8430 and will be made available to any interested party on request.

DEPOSIT OF SECURITIES IN LIEU OF RETENTION

Pursuant to the terms and conditions set forth in Public Contracts Code Section 22300, the Contractor may substitute certain securities in lieu of the ten percent (10%) retention which will be withheld by Agency as retention to ensure Contractor's performance under the contract. Such substitution of securities in lieu of retention shall be at the Contractor's request and at the Contractor's sole expense. (Public Contract Code 22300).

BOND REQUIREMENTS

Bidder's attention is directed to those provisions of the contract documents which require the Contractor to whom the contract for work is awarded, to file with the Agency at the time the contract is executed, a Contractor's Labor and Material Payment Bond and a Contractor's Performance Bond meeting all the requirements of the contract documents and approved by the General Counsel of the Redevelopment Agency of the City of San Jose. Bonds shall be executed by a surety possessing a valid certificate of authority issued by the California Department of Insurance and shall name the

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Redevelopment Agency as beneficiary. The Contractor's Performance Bond shall be for 100% of the contract price. The Contractor's Labor and Material Payment Bond shall be for 100% of the contract price.

CONTRACTOR'S LICENSE REQUIREMENTS

All prospective bidders are hereby cautioned that the State of California Contractor's Law regulates license requirements for bidding various types of projects. This project can be bid by a contractor possessing, at the time of bid submittal, a valid Class A or Class C-34 California Contractor's License ("License"). Failure to possess the License shall render the bid non-responsive and shall act as a bar to award the contract to any bidder that does not satisfy this requirement at the time of bid submittal. Each bidder shall furnish satisfactory evidence of competency to perform the work contemplated. The contractor, in its proposal, shall be required to disclose its license classification, number, and expiration date. (Public Contract Code 3300).

STATEMENT OF QUALIFICATIONS

The Agency reserves the right to reject a bid if the bidder has not submitted a Statement of Qualifications as set forth in the contract documents prior to the date of the opening of the bids or with the bid proposal.

The Agency reserves the right to reject any and all bids or to waive any informalities in the bid.

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Bids may be held by the Redevelopment Agency of the City of San Jose for a period not to exceed ninety (90) days from the date of the opening of bids for the purpose of reviewing the bids and investigating the qualifications of the bidders prior to awarding the Contract.

THE REDEVELOPMENT AGENCY
OF THE CITY OF SAN JOSE

By: _____
DIRECTOR OF PROJECT MANAGEMENT

Date: _____

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SECTION 00100

INSTRUCTIONS TO BIDDERS

Section 1. General Information.

1.1. Project General Description. - The Redevelopment Agency of the City of San Jose (the "Agency") invites bids for the Santa Clara Street Lot / Amgen Drainage Improvements Project (the "Project") which includes, but is not limited to: removal and excavation of asphaltic concrete paving and soils; placement of gravel and associated drainage improvements; and related site work, upon certain property located in the Civic Plaza Redevelopment Project Area, on the north side of Santa Clara Street, between Fourth and Fifth Streets, San Jose, California (the "Site")

1.2. Site Coordination. - The "Contractor", as defined in the General Conditions, shall, prior to any use of the Site, coordinate its activities with the Agency.

Section 2. Bidder's Responsibilities and Representations.

2.1. Examination of Plans, Specifications, Special Provisions and Site of Work. - The bidder shall examine carefully the Site of the work contemplated and "Contract Documents", as defined in the General Conditions. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality and scope of work to be performed, the quantity of materials to be furnished, and as to the requirements of the Contract Documents.

Bidders should direct their attention to the Agency requirement, noted in Section 00100, Instructions to Bidders, Section 7. – "Special Provisions", that the Contractor shall perform with the Contractor's own organization contract work amounting to not less than fifteen percent (15%) of the original total contract price.

Where investigation of subsurface conditions has been made by the Agency in respect to foundation or other design, bidders may inspect the records of the Agency as to such investigation, including examination of samples, if any. When the Contract Documents include a log of test borings showing a record of the data obtained by the Agency's investigation of subsurface conditions, such log represents only the opinion of the Agency as to the character of material encountered by it in its test borings and is only included for the convenience of bidders.

Investigations of subsurface conditions are made for the purpose of design, and the Agency assumes no responsibility whatsoever with respect to the sufficiency or the accuracy of borings or of the log of test borings or other preliminary investigations, or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the

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conditions indicated are representative of those existing throughout the work, or any part of it, or that unlooked-for development may not occur.

Making such information available to bidders is not to be construed in any way as a waiver of the provisions of the first paragraph of this Section and bidders must satisfy themselves through their own investigations as to conditions to be encountered.

No information derived from such inspection of records of preliminary investigations made by the Agency or its employees or from the Contract Documents will in any way relieve the Contractor from any risk or from properly fulfilling all the terms of the Contract Documents.

2.2. Concealed Conditions. - The Contractor shall promptly and before the following conditions are disturbed, notify the Agency in writing of any:

(1) Material that the Contractor believes was not previously identified in the Construction Manual, and may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III, disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the Site differing from those indicated by information about the Site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

After receipt of notice from the Contractor, the Agency shall promptly investigate such conditions. If the Agency finds that the conditions do materially so differ as described in the Contractor's notice, or do involve hazardous waste not previously identified in the Contract Documents, and will result in a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, the Agency may, in its sole discretion, elect to have Contractor perform any such work required by such differing conditions, and shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between the Agency and the Contractor over whether or not the conditions materially differ, or involve hazardous waste, or will result in a decrease or increase in the Contractor's cost of, or time required for performance of any part of the work, or if the Agency does not elect to have Contractor perform any additional work required by such differing conditions, the Contractor shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all work to be performed under the Contract Documents. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

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2.3 Qualification of Bidders. - Bidders shall possess a valid California **Class A (General Engineering Contractor) or C-34 (Pipeline Contractor)** Contractor's License at the time of the bid submittal. Failure to possess the Class A or C-34 License shall render the bid non-responsive and shall act as a bar to award of the contract to any bidder that does not satisfy this license requirement at the time of bid submittal. Each bidder shall furnish satisfactory evidence of competency to perform the work contemplated. The Agency reserves the right to reject a bid if the bidder has not submitted a Statement of Qualifications prior to the date of the opening of the bids.

Bidders must submit with their bid a statement of their qualifications and experience in performing similar construction work on or attached to the form entitled "Statement of Qualifications and Experience of Bidder". The Agency reserves the right to make an investigation of Bidder's qualifications to perform the work, including but not limited to, Bidder's financial condition, trustworthiness, fitness, capacity and experience to satisfactorily perform the contract.

It is the intention of the Agency to award a contract only to a bidder who furnishes satisfactory evidence that the bidder has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to prosecute the work successfully and promptly, and to complete the work within the time specified in the Contract Documents.

To determine the degree of responsibility to be credited to a bidder, the Agency will weigh any evidence that the bidder or personnel guaranteed to be employed in responsible charge of the work has or has not performed satisfactorily on other contracts of like nature and magnitude or comparable difficulty at similar rates of progress.

Notwithstanding any provisions in the Contract Documents to the contrary, failure of the bidder to submit the "Statement of Qualifications and Experience of Bidder" covering experience on similar work, the Agency may, at its option and sole discretion, reject the bid of such bidder. The Agency shall not be bound to reject such bid on such ground and may award a contract to perform the work to such bidder if the Agency, on the basis of information available to it from any source, concludes that such bidder has the experience and ability, machinery, facilities, plant, equipment, and the financial resources and stability necessary to carry out and complete the work within the time required.

2.4 Determining Prevailing Wage Rates and Classifications. Applicable prevailing wage rates and labor classifications are on file with the City of San Jose's Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor Tower, San Jose, California 95113, (408) 535-8430. The City of San Jose does not allow some labor classifications – the Bidder is responsible for consulting the list of prohibited classifications and preparing the bid accordingly.

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Section 3. Bidding Documents and Procedure.

3.1. **Bidding Documents.** - Bidding Documents include the Notice to Contractors/Invitation for Bids; Instructions to Bidders; Proposal Form; form of Bidder's Bond; Statement of Qualifications and Experience of Bidder; List of Subcontractors; Contractor's Performance Bond form; Labor and Material Payment Bond form; Owner-Contractor Agreement form; General Conditions and other Contract Documents; Noncollusion and Financial Statement Affidavit; and any Addenda issued prior to receipt of bids. Any bid not containing information required for submission of bid, or a bid containing information which is subsequently proven false, shall be considered nonresponsive and shall be rejected.

3.2. **Addenda and Interpretations.** - Written addenda by way of clarifications, amendments, changes or additions to the Contract Documents including a change to the proposed opening time, date or place may be issued by the Agency before the opening of bids. Addenda will be mailed by certified mail with return receipt requested or telephone facsimile (FAX) transmitted to all prospective bidders prior to the opening of the bids. Failure of any bidder to receive any addenda shall not relieve the bidder from any obligations imposed by the addenda. All addenda issued shall become a part of the Contract Documents and the price therefore, set forth in the bid. The date and time for closing of submission of bids set forth in the Invitation for Bids shall be extended by no less than 72 hours in the event the Agency issues any material changes, additions, or deletions to the bid package within 72 hours of the time established for bid closing.

No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally. Every request for such interpretation should be in writing, addressed to The Redevelopment Agency of the City of San Jose, Attn: Charlie Rous at 200 East Santa Clara Street, 14th Floor Tower, San Jose, California 95113, and to be given consideration, must be received at least five (5) calendar days prior to the date fixed for the opening of bids. Any and all such interpretations will be in the form of writing which, if issued, will be sent either by express mail, certified mail with return receipt requested or transmitted by telephone facsimile (FAX) to all prospective bidders prior to the date fixed for the opening of bids. Failure of any bidder to receive any such interpretation shall not relieve such bidder from any obligation under its bid as submitted. All interpretations so issued shall become part of the Contract Documents.

3.3. **Proposal Forms.** The Agency will furnish to each bidder a Proposal Form, which, when filled out, executed and accompanied by all supplements required in the Proposal Form, shall be submitted as its bid. Bids not presented on forms so furnished or submitted without all supplements may be disregarded.

All proposals shall give the prices proposed both in words and in figures in the respective spaces provided, and shall be signed by the bidder. The bidder shall fill out all blanks in the Proposal Form, including, without limitation, all alternate prices. In the

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event the price for a particular item is zero, the bidder shall fill out the blank with the number and word "zero". In the case of any discrepancy between words and figures, the words shall prevail, unless it clearly appears in the proposal in Agency's opinion that the words rather than the figures are in error. Proposals shall be clearly written without erasures or deletions. Where unit prices are solicited, in the event of any discrepancy between the unit price and the extended price, the unit price multiplied by the number of units shall prevail. In the event of any discrepancy between the total contract amount and the sum of the extended prices, the sum of the extended prices shall prevail. The bidder shall not modify the Proposal Form or qualify bids.

A Proposal Form is attached. Additional copies may be obtained at the Redevelopment Agency of the City of San Jose, 200 East Santa Clara Street, 14th Floor Tower, San Jose, California 95113.

3.4. Designation of Subcontractors, etc. Bidder is hereby advised that the City of San Jose has an ordinance in place which precludes certain contractors, subcontractors and suppliers from performing work or providing material or services on Agency projects. Bidder is responsible for contacting Agency prior to submitting its bid to determine which contractors, subcontractors and suppliers have been barred from Agency projects. A bid submitted which contemplates the use of such contractors, subcontractors or suppliers on this Project will be found to be nonresponsive. The use of such contractors, subcontractors or suppliers on this Project by the successful bidder will, at Agency's option, be grounds for termination for cause of the contract.

Each bidder, in making a bid or offer to perform the work, shall in its bid set forth:

(a) the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the work or improvement, or each California-licensed subcontractor who will specially fabricate and install a portion of the work or improvement according to detailed drawings contained in the Contract Documents, in an amount in excess of one-half of one percent of the bidder's total bid, and

(b) a brief description of the portion of the work which shall be done by each subcontractor.

The bidder shall comply with all the provisions of Section 4104 of the California Subletting and Subcontracting Fair Practices Act, Cal. Pub. Contr. Code §§ 4100-4114.1.

3.5. Bid Security. All bids shall be presented under sealed cover and accompanied by one of the following forms of bidder's security: a cashier's check made payable to the Agency, a certified check made payable to the Agency, or a Bidder's Bond executed as principal by the bidder and as surety, by an admitted surety insurer authorized to engage in such business in California, made payable to the Agency.

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The security shall be in an amount equal to at least ten percent (10%) of the total amount bid by a bidder, including alternate prices, if any, upon which such bidder makes its highest bid. A bid shall not be considered unless one of the foregoing forms of bidder's security is enclosed with it.

If the successful bidder fails to execute the contract or fails to provide satisfactory evidence of compliance with Paragraphs 6.1, 6.2 and 6.3 of these Instructions to Bidders, within the time specified in the Invitation For Bids or in the specifications referred to therein, the amount of the security may be declared forfeited to the Agency and all bonds so forfeited may be prosecuted.

It is understood that the bid security shall not be considered as liquidated damages for the failure of the bidder to execute and deliver the Contract Documents, insurance certificates and performance and payment bonds. The bid security shall neither limit nor fix liability to the Agency for damages suffered because of failure to execute and deliver the required Contract Documents, insurance certificates and bonds.

3.6. Withdrawal of Bids. - Any bid may be withdrawn at any time prior to the time fixed in the Notice to Contractors - Invitation for Bids for the opening of bids only by written request for the withdrawal of the bid filed with the Agency. The request shall be executed by the bidder or its duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to file a new bid. This section does not authorize the withdrawal of any bid after the time fixed in the Notice to Contractors - Invitation For Bids for the opening of bids.

3.7. Pre-Bid Meeting. - Two pre-bid meetings will be held on **Thursday, February 19, 2009, at 2:00 p.m.** and **Thursday, February 26, 2009, at 2:00 p.m.** at the Redevelopment Agency of the City of San Jose, 200 East Santa Clara Street, 14th Floor Tower, San Jose, California. Attendance at these meetings is not mandatory. A site visit may follow the pre-bid meetings.

Section 4. Consideration of Bids.

4.1. Filing of Bids. - All bids must be filed with the Agency office at the Redevelopment Agency of the City of San Jose, 200 East Santa Clara Street, 14th Floor Tower, San Jose, California 95113, on or before the time specified in the Notice to Contractors - Invitation For Bids for opening the proposals.

4.2. Public Opening of Bids. - Bids will be opened and read publicly and the aggregate bid of each bidder declared at the time and place indicated in the Notice to Contractors - Invitation For Bids. Bidders or their authorized agents are invited to be present.

4.3. Award of Contract. - The award of the contract, if awarded, will be to the lowest responsible bidder. The award, if made, is expected to be made within ninety

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(90) calendar days after the opening of bids or within such later time as is mutually acceptable to Agency and lowest responsible bidder.

4.4. Rejection of Bids. - In its absolute and sole discretion, the Agency may reject any or all bids presented. Individual bids may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures or irregularities of any kind or if the supplements set forth in the Proposal Form are not submitted with the bid. The Agency may, in its absolute and sole discretion, waive any informalities or minor irregularities in the bids.

When bids are signed by an agent, other than the officer or officers of a corporation authorized to sign contracts on its behalf, or a member of a partnership, a Power of Attorney must be on file with the Agency prior to opening bids or shall be submitted with the bid; otherwise, the bid may be rejected as irregular and unauthorized.

4.5. Disqualification of Bidders. Any one or more of the following causes may be considered as sufficient for the disqualification of bidder and the rejection of the bidder's bid.

(a) Submittal of more than one (1) bid for the same work from an individual firm, partnership, or corporation under the same or different names.

(b) Submittal of unbalanced bids in which the prices for some items are out of proportion to the prices for other items.

(c) Lack of responsibility as shown by past work judged from the standpoint of workmanship and progress.

(d) Uncompleted work which, in the judgment of the Agency, might hinder or prevent the prompt completion of additional work if awarded.

(e) For being in arrears on existing contracts, in litigation with the Agency or the City of San Jose, or having defaulted on a previous contract.

(f) Lack of competency as revealed by experience on other projects.

(g) Submittal of a bid not containing the required information, or a bid containing information which is subsequently proven false.

(h) Evidence of collusion among bidders.

(i) The bidder has been barred from bidding on Agency or City projects under the provisions of the San Jose Municipal Code Section 14.4.600 *et seq.* or has documented violations of prevailing wage law requirements through the City of San

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Jose's Office of Equality Assurance or the Department of Industrial Relations on City or Agency Projects.

4.6. Penalty for Collusion. - If at any time it shall be found that the person, firm or corporation to whom the Contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the Contract so awarded shall be null and void, and the Contractor and its sureties shall be liable to the Agency for all loss or damage which the Agency may suffer thereby, and the Agency may advertise anew for bids for such work.

4.7. Return of Bid Securities. - All bid securities will be held until the Contract Documents have been formally executed and the successful bidder has filed with the Agency, completed initial labor compliance documentation required for enforcement of prevailing wage requirements of this contract, the Faithful Performance Bond, the Contractor's Payment Bond, and the insurance policies required by the Contract Documents, after which such bid securities will be returned to the respective bidders whose bids they have accompanied.

4.8. Relief of Bidders. - After the time set for the opening of bids, no bidder shall be relieved of a bid, unless the Agency consents, and there shall be no change made in any bid because of a mistake. However, if such relief is not granted and the bid guarantee declared forfeit, the bidder may bring an action against the Agency in a court of competent jurisdiction in Santa Clara County for the recovery of the amount forfeited, without interest or costs.

The complaint shall be filed, and summons served on the Director of Project Management, Redevelopment Agency of the City of San Jose, within 90 days after the opening of the bid; otherwise, the action shall be dismissed.

To be relieved of its bid without forfeiture of its bid security, the bidder shall establish to the satisfaction of the Agency, determined in its sole and absolute discretion, that:

- (1) A mistake was made.
- (2) The Contractor gave the Agency written notice within five working days after the opening of the bids of the mistake, specifying in detail in the notice how the mistake occurred.
- (3) The mistake made the bid materially different than the Contractor intended it to be.
- (4) The mistake was made in filling out the bid and not due to an error in judgment or to carelessness by the Contractor in inspecting the site of the work, or in reading the plans or specifications.

Other than the above described notice to the Agency, no claim is required to be filed by the bidder before bringing a legal action against the Agency under this Section to recover a forfeited bid guarantee.

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A bidder who claims a mistake and is relieved of its bid or who forfeits its bid guarantee shall be prohibited from participating in further bidding on the contract for the public work on which the mistake was claimed or security forfeited.

4.9 Protest of Bid Award - A participating bidder may protest a proposed award for this Project. The protesting bidder shall deliver the written bid protest to Bill Ekern, Director of Project Management, 200 East Santa Clara Street, 14th Floor, San Jose, CA 95113. The protest shall be filed before 5 p.m. of the fifth working day following the bid opening date, or Agency's issuance of written notice to all bidders that award shall be made to a bidder other than the apparent low bidder ("Intent to Award"), whichever is later. The protest shall provide a full and complete statement specifying in detail the ground of the protest and the facts supporting the protest.

The Agency will not make any award for this Project prior to the expiration of the protest period. If a protest is received, the Agency will not award a contract until either the protest has been withdrawn, or the Agency's Executive Director has made a final, written decision as to the action to be taken relative to the protest.

The procedure and time limits set forth in this section 4.9 are mandatory and the bidders' sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

Section 5. Post-Bid Information.

5.1. Material Guaranty - The successful bidder may be required to furnish a written guaranty covering certain items of work for varying periods of time from the date of acceptance of the contract. The work to be guaranteed, the form and the time limit of the guaranty will be specified in the Contract Documents. Said guaranty shall be signed and delivered to the Agency before acceptance of the Contract. In addition the successful bidder may be required to furnish a complete statement of the origin, composition, and manufacture of any or all materials to be used in the construction of the work together with samples, which samples may be subjected to the tests provided for in the specifications to determine their quality and fitness for the work.

5.2. Execution of Contract - The Owner-Contractor Agreement shall be signed by the successful bidder and returned, together with the labor compliance documentation, Contract, bonds, insurance, and labor compliance documentation within eight (8) calendar days, not including Sundays and legal holidays, after the bidder has received notice by certified mail with return receipt requested or delivered in person and signed for, that the Contract has been awarded. Any delay caused by the successful bidder in delivery of the Owner-Contractor Agreement executed by the Contractor, labor compliance documentation, bonds and insurance within eight (8) calendar days shall not be cause for extension of the Scheduled Completion Date as defined in the Proposal Form.

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5.3. Failure to Execute Contract. - Failure to execute the Owner-Contractor Agreement and file labor compliance documentation, acceptable bonds and insurance as provided herein within eight (8) calendar days, not including Sundays and legal holidays, after the bidder has received notice either by an overnight delivery service or by certified mail with return receipt requested that the Contract has been awarded, shall be just cause for the annulment of the award and the forfeiture of the bid security. If the successful bidder refuses or fails to execute the Owner-Contractor Agreement and provide the required bonds and insurance policies and certificates, the Agency Board may award the Contract to the second lowest responsible bidder. If the second lowest responsible bidder refuses or fails to execute the Contract and provide the required bonds and insurance policies and certificates, such bidder's bid security shall be forfeited to the Agency and the Agency Board may award the Contract to the third lowest responsible bidder. On failure or refusal of the third lowest responsible bidder to whom the Contract is so awarded, to execute the same and provide the required bonds and insurance policies and certificates, such bidder's bid security shall be likewise forfeited to the Agency. The Agency Board may at any time readvertise for bids, or may provide that the work shall be done by the Agency's employees to the extent that such may be authorized by law.

Section 6. Labor Compliance Documentation; Performance Bond; Labor and Material Payment Bond; Insurance.

6.1. Performance Bond. - At the time of executing the Contract Documents, the successful bidder shall execute and file with the Agency the performance bond form provided in the Project Construction Manual or an Agency approved similar bond in the penal sum of at least one hundred percent (100%) of the Contract price, secured by one (1) or more sufficient sureties, acceptable to the Agency, conditioned upon the faithful performance of the Contract within the Contract time. In case of failure on the part of the Contractor to complete the Contract within the time fixed in the Contract Documents, or such extension thereof as may be allowed, the Contract shall be terminated and the Agency shall not thereafter pay or allow Contractor any further compensation for any work done by Contractor under said contract, and the Contractor or its sureties shall be liable to the Agency for all loss or damage which it may suffer by reason of the Contractor's failure to complete the Contract within such time.

6.2. Contractor's Payment Bond. - The Contractor shall, at the time of executing the Owner-Contractor Agreement, file with the Agency a good and sufficient bond on the bond form provided in the Project Construction Manual or an Agency approved similar bond in an amount not less than the sums specified in Section 3248(a) of the California Civil Code. To be approved, the payment bond must provide that if the Contractor or its subcontractor shall fail to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Employment Insurance Code with respect to the work or labor contracted to be done and performed by any such claimant, then the surety or sureties will pay for the same, in an amount not exceeding the amount of the bond, and also, in case suit is brought upon the bond,

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reasonable attorney's fees to be fixed by the court. To be approved, the payment bond shall, by its term, inure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon the bond, including the right of action to recover on the bond, in any suit brought to foreclose the liens provided for in Title 15, Part 4, Division 3 of the California Civil Code or in a separate suit brought on this bond. The payment bond shall otherwise comply with all of the provisions of Title 15, Part 4, Division 3 of the California Civil Code.

Unless a Contractor's Payment Bond is filed and approved as herein provided, no claim in favor of the Contractor arising under the Contract shall be audited, allowed or paid by the Agency. Any persons named in Section 3181 of the California Civil Code shall receive payment of their respective claims in the manner provided by Chapter 4, Part 4, Division 3, Title 15 of the California Civil Code upon having complied with the conditions of Section 3183 of the California Civil Code.

6.3. Insurance Requirements. - The Contractor, at the Contractor's sole cost and expense and for the full term of the Contract or any renewal thereof, shall obtain and maintain at least all of the minimum insurance requirements set forth in Article 11 of the General Conditions for this Project prior to commencing any work or receiving payments therefore under this contract.

6.4. Notification of Surety Companies. - The surety companies and other signers of any of the above mentioned bonds, and all insurance companies, shall familiarize themselves with all of the conditions and provisions of the Contract Documents and Specifications, and they waive the right of special notification of any change or modification of this Contract or of extension of time, or of decreased or increased work, or of the cancellation of the contract, or of any other act or acts by the Agency or its authorized agents, under the terms of the Contract Documents and Specifications; and failure to so notify the aforesaid surety companies or insurance companies of changes shall in no way relieve the surety companies of their obligation under the Contract Documents and Specifications.

6.5 Labor Compliance Documentation. - The Contractor shall, at the time of executing the Owner-Contractor Agreement, file with the Agency a completed set of Labor Compliance Documentation on the form provided in the Project Construction Manual. If Contractor has any questions as to applicable labor rates or labor categories or use of apprentices, Contractor may direct questions to the City of San Jose's Office of Equality Assurance. To be approved, the Labor Compliance Documentation shall be complete as to all labor to be provided on the Project.

Section 7. Special Provisions - Specifications and Plans.

7.1. Subcontracting. - The Contractor shall perform with the Contractor's own organization contract work amounting to not less than fifteen percent (15%) of the original total contract price.

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7.2. Application of City of San Jose 1992 Standard Specifications and Details. -
The work embraced herein shall be done in accordance with the Technical Provisions of the 1992 City of San Jose Standard Details insofar as the same may apply. In the event of a conflict between the terms and conditions of the Technical Provisions of the City of San Jose 1992 Standard Details and the Agency's Contract Documents and Project Manual, the Agency's Contract Documents and Project Manual shall control.

END OF SECTION 00100

SECTION 00200 IS RESERVED

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SECTION 00300

PROPOSAL FORM

PROPOSAL TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

FOR THE

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

Name of Bidder: _____

The representations herein are made under penalty of perjury.

To: The Redevelopment Agency of the City of San Jose
 200 East Santa Clara Street, 14th Floor Tower
 San Jose, California 95113

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation; that the bidder has thoroughly read and examined and has full knowledge of and understands all the provisions and contents of this proposal and the documents which must be attached hereto, the Plans and Specifications approved by the Redevelopment Agency's Director of Project Management on February 5, 2009, entitled "Santa Clara Street Lot / Amgen Drainage Improvements Project" on file in the office of the Director of Project Management of the Redevelopment Agency of the City of San Jose, 200 East Santa Clara Street, 14th Floor Tower, San Jose, California 95113, that the bidder has thoroughly examined said Plans and Specifications which are on file in the office of the Agency's Director of Project Management, and that the bidder has full knowledge of and understands said Plans and Specifications and the requirements thereof; and that the bidder has further read and understands, and has knowledge of the contents of any and all addenda to said Plans and Specifications on file; and that the bidder proposes and agrees, if this proposal is accepted, that the bidder will contract with the Redevelopment Agency of the City of San Jose, in the form of the copy of the contract on file in the office of the Agency's Director of Project Management, to do all the work and furnish all materials specified or referred to in the contract, in the manner and time therein prescribed, and according to the requirements of the City and Agency as therein set forth, to furnish the contract, bonds and insurance specified in the Specifications and Bid Documents, and to do all other things required of the Contractor by the contract.

If the bidder or other interested persons is a corporation, state legal name of corporation, also names of the President, Secretary, Treasurer, and the Manager thereof; if a partnership, state the name of the partnership, if one exists, also the names of all the partners comprising the partnership; if any of the partners are individuals, state

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the first and last name of every individual in full, if any of the partners are corporations, state for each such corporation, the information required above of corporations; if any of the partners are partnerships, state for each such corporation, the information required above of partners; if the bidder or other interested person is a joint-venture, state the name of the joint venture, also names of all joint venturers comprising the joint venture; if any of the joint venturers are individuals, state the first and last name of every individual comprising the joint venture; if any of the joint venturers are corporations, state for each corporation the information required above of corporations; if any of the joint venturers are partnerships, state for each such partnership the information required above of partners; if bidder or other interested persons is an individual, state first and last names in full.

If bidder is an individual, the bidder's signature shall be placed below; if bidder is an individual, doing business under a fictitious name, the name of the individual followed by the words "doing business as (insert fictitious name)" shall be set forth above, together with the signature of the individual; if bidder is a corporation, the legal name of the corporation shall be set forth above, together with the signature of the officer or officers of the corporation, authorized to sign contracts on behalf of the corporation, the corporate title; that is Vice-President, Secretary, etc., should be placed below the name of the officer and the corporate seal affixed; if bidder is a partnership, the legal name of the partnership, if one exists, shall be set forth above, together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; if any of the partners are corporations, execution for such partners shall be accomplished in accordance with the requirements set forth above for corporations; if any of the partners are partnerships, execution for such partners shall be accomplished in accordance with the requirements set forth above for partnership; if bidder is a joint-venture, the legal name of the joint venture, if one exists, shall be set forth above for partnerships. If signature is by an agent other than an officer of a corporation, or member of a partnership or a joint venture, a Power of Attorney must be on file with the Agency prior to opening bids or submitted with the bid; otherwise, the bid may, at the Agency's option, be disregarded as non-responsive.

BASE BID AMOUNT

A. Base Bid

Lump sum price for the furnishing of all labor, materials, services, equipment, fringe benefits, taxes, insurance, overhead and profit and any other costs or expenses necessary to perform all of the work:

_____ DOLLARS
(\$_____)

B. The above base bid includes all addenda issued by the Agency.

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AWARD OF CONTRACT

- A. Basis for Award: The lowest bid shall be determined on the basis of the Base Bid, without consideration of additive or deductive alternates, if any.
1. The award of the contract, if it is to be awarded, will be to the lowest responsive and responsible bidder. The award, if made, is expected to be made on or about **March 19, 2009**.
 2. The Owner-Contractor Agreement shall be signed by the successful bidder and returned, together with the labor compliance documentation, contract bonds and insurance, within eight (8) calendar days, not including Sundays and legal holidays, after the bidder has received notice by certified mail with return receipt requested, or by hand delivery that the contract has been awarded. Any delay caused by the successful bidder in the delivery of the Owner-Contractor Agreement executed by the Contractor, labor compliance documentation, bonds and insurance within eight (8) calendar days shall not be cause for extension of the Completion Date.
 3. Successful bidder shall file at least the minimum insurance requirements as outlined in Article 11 of the General Conditions.
 4. If the successful bidder refuses or fails to execute the Owner-Contractor Agreement and provide the required labor compliance documentation, bonds and insurance policies and certificates, the Agency Board may award the contract to the second lowest responsible bidder. If the second lowest responsible bidder refuses or fails to execute the contract and provide the required labor compliance documentation, bonds and insurance policies and certificates, such bidder's bid security shall be forfeited to the Agency and the Agency Board may award the contract to the third lowest responsible bidder. On failure or refusal of the third lowest responsible bidder to whom any such contract is so awarded, to execute the same and provide the required labor compliance documentation, bonds and insurance policies and certificates, such bidder's bid security shall be likewise forfeited to the Agency. The Agency Board may at any time re-advertise for bids, or may provide that the work shall be done by the Agency's employees to the extent that such may be authorized by law.
 5. If the successful bidder fails to execute the contract or fails to provide satisfactory evidence of compliance with Article 6 of the Instructions to Bidders within the time specified in the Invitation For Bids or in the specifications referred to therein, the amount of the security may be declared forfeited to the Agency and all bonds so forfeited may be prosecuted.

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- B. It is understood that the Agency reserves the right to reject this bid but that it shall remain open and not be withdrawn for a period of ninety (90) calendar days from the date prescribed for its opening.
- C. If written acceptance is mailed or delivered to the undersigned before bid is withdrawn by written notification to Agency, undersigned will execute and deliver a contract to Agency in accordance with this bid as accepted.

TIME OF COMPLETION

- A. The Work under the Contract shall proceed pursuant to and in accordance with a written notice from Owner to Contractor to proceed ("Notice to Proceed"). It is anticipated that the Notice to Proceed will be issued on or about **April 3, 2009**. Contractor shall diligently commence performance of the Work on the date specified in the Notice to Proceed. Contractor shall complete performance of the entire Work (as defined in Article 8 of the General Conditions) on or before twenty-five (25) consecutive business days after the date of issuance of the Notice to Proceed ("Scheduled Completion Date").
- B.
 - 1. Contractor shall begin Work in accordance with the Notice to Proceed, and shall diligently prosecute the Contract to completion within the time limits specified.
 - 2. Should Contractor begin work in advance of receiving notice that Contract has been approved by the Agency, any work performed by Contractor in advance of date of approval shall be considered as having been done by Contractor at Contractor's own risk.

IDENTIFICATION

- A. Notice of acceptance, or request for additional information, may be addressed to the undersigned at the address set forth below.
- B. The names of all persons interested in the foregoing bid as principals are:

Important Notice: If a corporation, give legal name of corporation, state where incorporated, and names of president and secretary; if a partnership, give name of firm and names of all individual co-partners composing the firm; if an individual, give first and last names in full.

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- C. Contractor's License: Contractor is licensed in accordance with an act for registration of contractors with the following Contractor's License number issued by the California Contractor's State License Board:

Class _____ License No. _____
Expiration Date _____.

- D. Signature of person(s) with legal authority to sign contracts:

- E. Business Address:

SUPPLEMENTS TO PROPOSAL FORM

In addition to all information required in the Instructions to Bidders, accompanying this Proposal Form are the following documents completely filled in by the bidder and hereby made a part hereof:

- A. Bidder's Bond or other Bid security (Section 00400).
- B. Statement of Qualifications and Experience of Bidder (Section 00410).
- C. List of Subcontractors (Section 00420).
- D. Affidavit of Financial Statement and Noncollusion (Section 00430).

In addition, Bidder has received the following, to be completed and returned with Contract following award:

Contractor's Performance Bond (Section 00510)

Labor and Payment Material Bond (Section 00511)

Labor Compliance Documentation (Section 00512).

If this bid proposal shall be accepted and the undersigned shall fail to contract, and to give the labor compliance documentation, Contractor's Performance Bond and the Contractor's Labor and Material Payment Bond required by the specifications and

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contract and by law, and to provide all insurance as required by said contract, within eight (8) days after the bidder has received notice from the Redevelopment Agency of the City of San Jose, the Agency may, at its option, determine that the bidder has abandoned his/her contract, and thereupon this bid and the acceptance thereof shall be null and void, and the forfeiture of such security accompanying this bid shall operate and the same shall be the property of the Redevelopment Agency of the City of San Jose.

In accordance with Public Contract Code Section 10232, the Contractor hereby states under penalty of perjury, that no more than one final unappealable finding on contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board. Signing this Proposal on the signature portion thereof shall constitute signature of this Statement.

Accompanying this bid are the following documents completely filled in by the bidder and the same are incorporated herein by reference;

1. A cashier's check or a certified check made payable to the Redevelopment Agency of the City of San Jose, or a bidder's bond executed by an admitted surety insurer naming the Agency as beneficiary, in an amount equal to at least ten percent (10%) of the total amount bid including all alternates.
2. A list of subcontractors for work over one half of one percent, if any, the address of each subcontractor, and the description of work to be done by each subcontractor.
3. A statement of qualifications and experience of bidder.
4. Executed Affidavit of Financial Statement and Noncollusion

The Agency may, at its option, request additional supplemental information after bid opening.

Bidder understands that the Redevelopment Agency of the City of San Jose reserves the right to reject any or all bids and to waive any informality in the bidding.

The undersigned, as bidder, declares that in listing subcontractors in this bid, I have not discriminated or given any preference to any firm based on race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin. I understand that any such discrimination or preference is in violation of Chapter 4.08 of the Municipal Code.

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The undersigned declares under penalty of perjury that the information contained in this bid and all accompanying documents are true and correct.

Executed on _____

Legal Company Name

Indicate Type of Entity: Sole Proprietorship,
Partnership (General/Limited Partners),
Corporation, Joint Venture, etc.

By: _____
Title: _____

City Business License No.: _____

Expiration Date: _____

State Contractor Lic. No.: _____

Classification: _____

Expiration Date: _____

Federal I.D. No.: _____

Address: _____

Telephone: _____

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ACKNOWLEDGEMENT

State of California
County of _____)

On _____ before me, _____
(insert name and title of officer)

Personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
Paragraph is true and correct.

WITNESS my hand and official seal

Signature _____ (Seal)

END OF SECTION 00300

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SECTION 00400

BIDDER'S BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____
as PRINCIPAL, and _____
a corporation duly organized under the laws of the State of _____
_____ and duly licensed to become sole surety on bonds required or
authorized by the State of California, as SURETY, are held and firmly bound unto the
Redevelopment Agency of the City of San Jose (hereinafter called the "Agency"), in the
penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID of the
Principal above named, submitted by the Principal to the Agency, for the work described
below; for the payment of which sum in lawful money of the United States, well and truly
to be made, we bind ourselves, our heirs, executors, administrators and successors,
jointly and severally, firmly by these presents. In no case shall the liability of the Surety
hereunder exceed the sum of _____ Dollars
(\$_____).

THE CONDITION OF THIS OBLIGATION IS SUCH,

That whereas the Principal has submitted the above mentioned bid to the
Redevelopment Agency of the City of San Jose, for certain construction specifically
described as follows, for which bids are to be opened at the Redevelopment Agency of
the City of San Jose, located at 200 East Santa Clara Street, 14th Floor Tower, San
Jose California, on March 5, 2009 for the following project:

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NOW, THEREFORE, if the aforesaid Principal is awarded the contract and,
within the time and manner required under the specifications, after the prescribed forms
are presented to him for signature, enters into a written contract, in the prescribed
forms, in accordance with the bid, and files a Contractor's Performance Bond and a
Contractor's Labor and Material Payment Bond, and files the required insurance policies
with the Agency, all as required by the specifications and the contract or by law, then
the obligation shall be null and void; otherwise it shall be and remain in full force and
effect.

The Surety, for value received, hereby stipulates and agrees that the obligation
of said Surety and its bond shall be in no way impaired or affected by any extension of
the time within which the Agency may accept such Bid; and said surety does hereby
waive notice of any such extension.

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In the event suit is brought upon this bond by the Agency and judgment is recovered, the Surety shall pay all costs incurred by the Agency in such suit, including reasonable attorney's fees to be fixed by the court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____, 200__.

PRINCIPAL

Legal Company Name

By: _____
Signature

Print Name

Title

By: _____
Signature

Print Name

Title

SURETY

Legal Company Name

By: _____
Signature

Print Name

Title

Address: _____

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures.)

END OF SECTION 00400

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

SECTION 00410

STATEMENT OF QUALIFICATIONS AND EXPERIENCE OF BIDDER

The bidder is required to state below, and on additional pages as necessary, the bidder's experience on similar work performed with a list of references that will enable the Owner to judge bidder's qualifications, experience, skill.

Date: _____

(Legal Company Name)

By: _____
(signature)

Printed Name: _____

Title: _____

END OF SECTION 00410

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SECTION 00420

LIST OF SUBCONTRACTORS

Designation of Subcontractors shall be as required in Section 2-1.15A of the City of San Jose Standard Specifications, July 1992.

NAME OF SUBCONTRACTOR	LOCATION OF PLACE OF BUSINESS	BRIEF DESCRIPTION OF PORTION OF WORK	

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SECTION 00430

NONCOLLUSION AND FINANCIAL STATEMENT AFFIDAVIT

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

_____, being first duly sworn, deposes and says:
print name

(1) The signatory is the _____ of _____, the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid; and

(2) In accordance with Title 23, United States Code, Section 112, he/she has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding connection with this contract; and

(3) As of the date of the bid submittal, Bidder has not filed for bankruptcy and has no plans to do so, and Bidder has the financial resources, capacity and stability to completely perform the contract.

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The undersigned declares under penalty of perjury that the information contained in this proposal and all accompanying documents are true and correct. Bidders are cautioned that making a false certification may subject certifier to criminal prosecution. The Agency reserves the right to investigate the statements made within this affidavit, including but not limited to, requiring a current financial statement.

Executed on _____

Legal Company Name

Indicate Type of Entity: Sole Proprietorship,
Partnership (General/Limited Partners),
Corporation, Joint Venture, etc.

By: _____
Title: _____

City Business License No.: _____

Expiration Date: _____

State Contractor Lic. No.: _____

Classification: _____

Expiration Date: _____

Federal I.D. No.: _____

Address: _____

Telephone: _____

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

ACKNOWLEDGEMENT

State of California
County of _____)

On _____ before me, _____
(insert name and title of officer)

Personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
Paragraph is true and correct.

WITNESS my hand and official seal

Signature _____ (Seal)

END OF SECTION 00430

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

SECTION 00500

**REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE
SAN JOSE, CALIFORNIA**

OWNER-CONTRACTOR AGREEMENT

FOR THE

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

THIS OWNER-CONTRACTOR AGREEMENT ("AGREEMENT") is made and entered into this _____ day of _____, 200_, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, a public body, corporate and politic, 200 East Santa Clara Street, 14th Floor Tower, San Jose, California 95113, ("OWNER") and _____, whose principal place of business is _____ ("CONTRACTOR").

In consideration of the mutual covenants and agreements set forth herein, CONTRACTOR and OWNER hereby agree as follows:

ARTICLE I

CONSTRUCTION

Subject to and in accordance with the terms of this Agreement, the CONTRACTOR shall do all the work and furnish all the labor, services, materials and equipment necessary to construct and complete, in accordance with the CONTRACT DOCUMENTS (as hereinafter defined) in a good, workmanlike and substantial manner and to the satisfaction of OWNER, SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT ("PROJECT") upon that real property located in San Jose, California more particularly depicted on Exhibit A (the "Site"). The PROJECT is that described and reasonably inferable from the drawings and specifications and documents enumerated in Exhibit B. Such construction and furnishing of labor, services, materials and equipment and the performance of CONTRACTOR's other services and obligations required by the CONTRACT DOCUMENTS are hereinafter referred to as the "WORK." The term "CONTRACT DOCUMENTS" shall mean this Agreement, all of the items enumerated in Exhibit B and all change orders or addenda issued with respect thereto, all the works and improvements described, mentioned and set forth in the CONTRACT DOCUMENTS. In the event of a conflict between the terms and conditions of the City of San Jose 1992 Standard Details and the Agency's Project Manual, the Agency's Project Manual shall control.

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ARTICLE II

CONTRACT SUM

OWNER shall pay and CONTRACTOR shall accept as full compensation for the WORK the sum ("CONTRACT SUM") set forth in Exhibit C.

ARTICLE III

TIME FOR PERFORMANCE

Section 3.1. Definitions.

The following are definitions as used in this Agreement:

The term "Completion Date" shall mean the date that all the WORK is substantially complete.

The term "Direct Costs" shall mean the premium portion of overtime pay, additional crew, shift or equipment cost and such other items of cost requested in advance by CONTRACTOR and approved by OWNER, which approval shall not be unreasonably withheld.

The term "Excusable Delay" shall mean an actual delay in the performance of the WORK by CONTRACTOR caused by any of the following if such events are beyond the reasonable control of CONTRACTOR despite having taken all reasonable attempts to prevent, avoid delay and mitigate the effects thereof:

- A. act or omission of OWNER, or by an employee, agent or representative of OWNER (other than by reason of the proper exercise of their respective rights, duties and obligations under the CONTRACT DOCUMENTS) except as provided in Section 7102 of the Public Contract Code; or
- B. fire, flood, unusually severe and abnormal weather conditions beyond the anticipated average number of rain days per year over a ten (10) year period based on historic weather data, war, embargo, sabotage, hurricane, earthquake, tornado or by injunction (not the fault of CONTRACTOR); or
- C. general strike, regulatory delays, strikes in or losses during transportation, or other similar event which is beyond CONTRACTOR's control.

The CONTRACTOR acknowledges that actual delays in activities that do not affect the completion time ("non-critical delays") do not have any effect upon the Scheduled Completion Date, and therefore, will not constitute an "Excusable Delay" nor be a basis for changing the Scheduled Completion Date. The CONTRACTOR acknowledges that

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

time extensions will be granted only to the extent that Excusable Delays exceed the available float in the PROJECT Schedule.

The term "Final Completion" shall mean the completion of all the WORK including punch list items.

The term "Notice to Proceed" shall have the meaning described in Section 3.2.

The term "PROJECT" shall have the same meaning as that set forth in the General Conditions.

The term "Scheduled Completion Date" shall mean and refer to the date set forth by Section 3.2 below, as such date may be extended pursuant to Section 3.3 below, or by Change Order.

The terms "Substantial Completion" and "Substantially Complete" shall have the meaning set forth in Article 8 and Article 9 of the General Conditions.

Section 3.2. Notice to Proceed/Scheduled Completion Date.

The WORK under the Contract shall proceed pursuant to and in accordance with a written notice from OWNER to CONTRACTOR to proceed ("Notice to Proceed"). CONTRACTOR shall diligently commence performance of the WORK on the date specified in the Notice to Proceed. CONTRACTOR shall complete performance of the WORK (as defined in Article 8 and Article 9 of the General conditions) on or before twenty-five (25) consecutive business days after the date of issuance of the Notice to Proceed ("Scheduled Completion Date").

Section 3.3 Extension of Scheduled Completion Date.

In the event that CONTRACTOR is actually delayed on the performance of the WORK by any "Excusable Delay" which is an unforeseeable delay beyond the CONTRACTOR's control and not the fault of either party, then the Scheduled Completion Date shall be extended for a period equal to the length of such Excusable Delay. Such extension of time on account of an Excusable Delay shall not be allowed unless applied for in writing by the CONTRACTOR within ten (10) calendar days of the commencement of any such delay, or the CONTRACTOR's reasonable notice of such delay, and the written approval of such extension of time is obtained from the Architect or the OWNER. No verbal approval, either express or implied, or any grant of time extension by OWNER or its agents shall be binding upon OWNER unless and until such approval is expressly ratified in writing.

In the event the CONTRACTOR is delayed in the WORK by any such Excusable Delay, the CONTRACTOR's remedy shall be an extension of time. In no event shall CONTRACTOR be entitled to a monetary payment over and beyond that which is

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

specified in the OWNER-CONTRACTOR Agreement plus that which is specified by duly executed change orders.

In the event of delay in the Work that is within Section 7102 of the Public Contract Code, the CONTRACTOR shall be entitled to an extension of time and compensation for such delay in strict accordance with the provisions of this section. The extension of time and provision for compensation shall not be allowed unless the CONTRACTOR provides the OWNER with written notice within ten (10) calendar days of the commencement of any such delay, or CONTRACTOR's reasonable notice of such delay. The OWNER must provide written approval of any extension of time, or payment of compensation. No verbal approval, either express or implied, or any grant of time extension by OWNER or its agents shall be binding upon OWNER unless and until such approval is expressly ratified in writing.

CONTRACTOR's remedy for a 7102 Delay, in addition to the extension of time, shall be as follows, upon CONTRACTOR's demonstration that these costs were actually impacted by the 7102 Delay:

- a. Field or on-site labor according to actual payroll data for the time of the 7102 Delay. No multipliers will be allowed unless previously approved in writing by OWNER;
- b. Idle field equipment will be priced at a daily rate calculated from the manufacturer quoted or invoiced costs;
- c. Idle field rental equipment will be priced at a daily rate calculated from the invoiced costs; and
- d. Total mark up of items (a) through (c) above for overhead and profit, including all levels of subcontractors and CONTRACTOR combined, shall not exceed 20% cumulative. For the purposes of this section, overhead includes (1) all indirect labor such as management, supervision, engineer and consulting, drafting, estimating, secretarial and accounting; (2) all field office expenses, including office supplies and equipment; (3) insurance and bonds; and (4) all corporate office expenses.

In the event of delay in the WORK which is not due to an Excusable Delay, or is not a 7102 Delay, OWNER may direct that the WORK be accelerated by means of overtime, additional crews or additional shifts or resequencing of the WORK. All such acceleration associated with an inexcusable delay, where the delay is attributable to the CONTRACTOR, shall be at no cost to OWNER. In the event of Excusable Delay or 7102 Delay, OWNER may similarly direct acceleration and CONTRACTOR agrees to perform same on the basis of reimbursement of Direct Cost plus a fee of five percent (5%) of such costs but expressly waives any other compensation therefore. In the event of any acceleration requested pursuant to this paragraph, CONTRACTOR shall provide promptly a plan including recommendations for, in CONTRACTOR's opinion, the most effective and economical acceleration.

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

Section 3.4 Liquidated Damages.

A. Timely Completion

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement, and that OWNER will suffer financial loss if the work is not complete within the time specified, plus any extensions of time authorized under Section 3.3 of this Agreement. OWNER and CONTRACTOR further recognize the delays, expense and difficulty involved in proving OWNER's actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, OWNER and CONTRACTOR agree that for each calendar day's delay beyond the Scheduled Completion Date, (which delays are not excused pursuant to Section 3.3 of this Agreement), CONTRACTOR shall pay to OWNER the sum of **One Hundred and No/100 Dollars (\$100.00)** as liquidated damages.

B. Prevailing Wage Compliance

OWNER and CONTRACTOR recognize that CONTRACTOR's breach of applicable prevailing wage provisions, including those applicable through the California Labor Code and OWNER's additional prevailing wage compliance provisions within this Contract (Article IV of the Owner-Contractor Agreement and Article 17 of the General Conditions), will cause the OWNER damage by undermining OWNER's goals in assuring timely payment of prevailing wages, and will cause the OWNER additional expense in obtaining compliance and conducting audits, and that such damage would not be remedied by CONTRACTOR's payment of restitution to the worker paid less than the prevailing wage. OWNER and CONTRACTOR further recognize the delays, expense and difficulty involved in proving OWNER's actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, OWNER and CONTRACTOR agree that for each instance where Owner has determined that prevailing wage requirements were not met, CONTRACTOR shall pay to OWNER as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wage which should have been paid.

OWNER

CONTRACTOR

ARTICLE IV

PREVAILING WAGES

This Project is a Public Work, subject to Labor Code §1771. The general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Agreement is that ascertained by the Director of the Department of Industrial Relations of the State of California, copies of which ("Prevailing Rate

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

Schedules") are on file in the City of San Jose Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor Tower, San Jose, California 95113, (408) 535-8430. The Prevailing Rate Schedules shall be made available to any interested party on request. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of worker employed on the PROJECT. CONTRACTOR shall post the Prevailing Rate Schedule at the Site.

CONTRACTOR shall forfeit, as a penalty as set forth in California Labor Code §1775, fifty dollars (\$50.00) for each calendar day or portion thereof, for each worker paid less than the prevailing rates set forth in the Prevailing Rates Schedules for any work done under the CONTRACT DOCUMENTS or any work done by any subcontractor under CONTRACTOR. CONTRACTOR shall comply with the payroll records requirements set forth in Section 17.2 of the General Conditions and the provisions in Section 7.10 of the General Conditions concerning apprentices and shall be responsible for causing all of CONTRACTOR's subcontractors to comply with these requirements and provisions.

In addition to the California Labor Code requirements, OWNER recognizes that CONTRACTOR's payment of prevailing wages promotes the following goals:

1. Protection of job opportunities within the City of San Jose and stimulation of the economy by reducing the incentive to recruit and pay a substandard wage to workers from distant, cheap-labor areas;
2. Benefiting the public through the superior efficiency and ability of well-paid employees, thereby avoiding the negative impact that the payment of inadequate compensation has on the quality of services because of high turnover and instability in the workplace;
3. Payment of a wage that enables workers to live within the community, thereby promoting the health and welfare of all citizens of San Jose by increasing the ability of such workers to attain sustenance, avoid poverty and dependence on taxpayer funded social services; and
4. Increasing competition by promoting a level playing field among contractors with regard to the minimum prevailing wages to be paid to workers.

CONTRACTOR's compliance with prevailing wage requirements is a material consideration of OWNER in entering into this Contract. OWNER will monitor CONTRACTOR's compliance with the Labor Code requirements and additional requirements of this Contract through the City Of San Jose's Office of Equality Assurance, as detailed in the General Conditions Articles 7, 9 and 17.

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

ARTICLE V

NON-DISCRIMINATION

In the performance of this contract the CONTRACTOR will not refuse or fail to hire or employ any qualified person, or bar or discharge from employment any person, or discriminate against any person, with respect to his compensation, terms, conditions or privileges of employment, because of such person's race, color, religion, creed, national origin, ancestry, ethnicity, disability, age, marital status, sex, sexual orientation, or actual or perceived gender identity. If the CONTRACTOR or any of his subcontractors shall be found in violation of the above nondiscrimination provision, the CONTRACTOR shall be deemed to be in material breach of this Agreement and thereupon the OWNER shall have the power to do all or any of the following: (1) to cancel or suspend this Agreement, in whole or in part, and (2) to deduct and retain from the amount payable to the CONTRACTOR the sum of \$250.00 for each person discriminated against in the performance of this Agreement for each calendar day during which such person was discriminated against in the performance of this Agreement, as liquidated damages for such breach of this Agreement, provided that the number of persons discriminated against shall not be deemed, for the purpose of determining the amount of such damages only, to exceed the number of positions in connection with which such discrimination occurs, e.g., if 20 persons are improperly discriminated against in connection with five positions, then the multiple use in assessing damages shall be the number of positions (5) and not the number of persons (20) discriminated against. In the event such finding is made after completion of the contract and after payment of all sums due CONTRACTOR by OWNER, CONTRACTOR shall be obligated to pay said sum to OWNER upon demand by OWNER. Violations of said provisions by subcontractors shall for the purposes of this provision be deemed to be violations by the CONTRACTOR. The CONTRACTOR shall not be deemed to be in breach of the provisions of this paragraph unless the State Fair Employment Practices Commission, or an appropriate Federal commission or agency, or a court of the State of California or of the United States Government finds, in any action or proceeding to which CONTRACTOR is a party, that the CONTRACTOR or a subcontractor discriminated against one or more specifically named employees or applicants for employment because of race, color, religion, creed, national origin, ancestry, ethnicity, disability, age, marital status, actual or perceived gender identity, sex or sexual orientation in the performance of this Agreement; provided that such court has issued a final judgment in such action or proceeding, or that the Fair Employment Practices Commission has issued a final order pursuant to Section 1426 of the Labor Code, or has obtained a final injunction pursuant to Section 1429 of the Labor Code, or that said appropriate Federal commission or agency has issued a final order or obtained a final injunction, and provided further, that for the purpose of this paragraph, no judgment, order, decree or injunction shall be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.

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The CONTRACTOR shall include the provisions of the above paragraph in every subcontract or purchase order so that such provision shall be binding upon each of his subcontractors and vendors.

ARTICLE VI

WORKER'S COMPENSATION INSURANCE

By my signature hereunder, as CONTRACTOR, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the WORK of this Agreement.

ARTICLE VII

CONFLICT

In the event of conflict between the terms of this Agreement and the bid or proposal of said CONTRACTOR, then, this Agreement shall control and nothing herein shall be considered as an acceptance of the terms of the proposal conflicting herewith.

ARTICLE VIII

EXHIBITS

This Agreement includes the following Exhibits which are attached hereto and incorporated herein by reference:

Exhibit A	The Site
Exhibit B	Contract Documents
Exhibit C	Contract Sum

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the day and year first hereinabove written.

APPROVED AS TO FORM:

REDEVELOPMENT AGENCY
OF THE CITY OF SAN JOSE

Senior Associate Counsel

By _____
Harry S. Mavrogenes
Executive Director

(CONTRACTOR Name)

By _____
Its _____

By _____
Its _____

Employer ID Number _____

Contractor's License No. _____
Expiration Date: _____

City Business License No.: _____
Expiration Date: _____

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

EXHIBIT A

SITE MAP

[to be attached]

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

EXHIBIT B

CONTRACT DOCUMENTS

1. Owner-Contractor Agreement
2. General Conditions
3. Contractor's Performance Bond
4. Contractor's Labor and Material Payment Bond
5. Project Plans
6. Project Specifications
7. Addenda, Substitutions, Modifications, Change Orders
8. List of Subcontractors, Suppliers, Truckers and Brokers (Non-Federally Funded Projects)
9. Instructions to Bidders
10. Technical Provisions of the City of San Jose, Standard Specifications for Public Works Construction, 1992 edition and subsequent addenda
11. City of San Jose Standard Plan Details for Public Works Construction, 1992 edition and subsequent addenda

END OF EXHIBIT B

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EXHIBIT C

CONTRACT SUM

A. TOTAL BASE PRICE

Lump sum price for the furnishing of all labor, materials, services, equipment, fringe benefits, taxes, insurance, overhead and profit and any other costs or expenses necessary to perform all of the work:

_____ DOLLARS
(\$_____)

B. TOTAL CONTRACT SUM:

_____ AND NO/100 DOLLARS
(\$_____)

END OF EXHIBIT C

END OF SECTION 00500

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

SECTION 00510

Bond Number: _____

CONTRACTOR'S PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That _____

as Principal, and _____
incorporated under the laws of the State of _____
and authorized to execute bonds and undertakings as sole Surety, are held and firmly
bound unto the Redevelopment Agency of the City of San Jose, a public agency
("Agency"), in the sum of _____
_____(DOLLARS) (\$ _____);
for the payment thereof, well and truly to be made, said Principal and Surety bind
themselves, their administrators, successors and assigns, jointly and severally, firmly by
these presents.

The condition of the foregoing obligation is such that:

WHEREAS, the above Principal is about to enter into a certain contract with the Agency
for the following work:

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the award of which contract was made to Principal by the Board of the Agency, on
_____, as will more fully appear by reference to the letter of the
Agency's Executive Director of this date.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its
duties, all the undertakings, covenants, terms, conditions, and agreements of said
contract during the original term thereof, and any extensions thereof which may be
granted by the Agency, with or without notice to the Surety, and if Principal shall satisfy
all claims and demands incurred under such contract, and shall fully indemnify and save
harmless the Agency from all costs and damages which it may suffer by reason of
failure to do so, and shall reimburse and repay the Agency all outlay and expense which
the Agency may incur in making good any default, then this obligation shall become null
and void; otherwise it shall be and remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby
stipulates and agrees that no change, extension of time, forbearance or waiver,
prepayment or delay in payment, alteration or addition to the terms of the contract or to
the work to be performed thereunder or the specifications accompanying the same shall

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in no way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, forbearance or waiver, prepayment or delay in payment, alteration or addition to the terms of the contract or to the work or to the specifications. The Surety hereby expressly acknowledges and agrees to be bound by the terms and conditions contained in the contract documents and any amendments and/or modifications thereto, and said contract documents, and modifications are hereby incorporated in this performance bond as though fully set forth herein.

IN WITNESS WHEREOF, this instrument is executed this _____
day of _____, 200__.

PRINCIPAL

SURETY

Legal Company Name

Legal Company Name

By: _____

Signature

By: _____

Signature

Print Name

Print Name

Title

Title

By: _____

Signature

Address: _____

Print Name

Title

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures.)

Approved by the General Counsel of The Redevelopment Agency of the City of San Jose on the ____ day of _____, 200__.

By: _____

Senior Associate Counsel

END OF SECTION 00510

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

SECTION 00511

Bond Number: _____

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, a public agency, is about to enter into a certain contract with

as Principal, namely, Contract for: _____, f

or the work hereinafter briefly described as follows: **SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT**, and more fully described in and required by the contract, the award of which was made to Principal by the Board of the Redevelopment Agency of the City of San Jose on _____, 200_, as will more fully appear by reference to the letter of the Agency's Executive Director of that date.

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract.

NOW, THEREFORE, we, the Principal and _____

incorporated under the laws of the State of _____, and authorized to execute bonds and undertakings as sole surety in the State of California, as Surety, are held and firmly bound unto the Agency in the penal sum of _____

DOLLARS (\$_____),
lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to any work or labor performed or materials supplied by any such claimant, which work, labor or materials are covered by the contract and any amendments, changes, change orders, additions, alterations, or modifications thereof, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors, pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor, the Surety will pay for the same, in an amount not exceeding the sum hereinabove specified.

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This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between Agency and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration, modification, rescission or attempted rescission, herein mentioned.

It is further stipulated and agreed that no final settlement between the Agency and the Contractor with reference to the work, shall abridge the right of any beneficiary hereunder whose claims may be unsatisfied.

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This bond is executed and delivered to comply with requirements of the City of San Jose, and to comply with the provisions of Title 15, Chapters 5 and 7 of Part 4, Division 3 of the Civil Code of the State of California.

SIGNED AND SEALED this ____ day of _____, 200__.

PRINCIPAL

SURETY

Legal Company Name

Legal Company Name

By: _____
Signature

By: _____
Signature

Print Name

Print Name

Title

Title

By: _____
Signature

Address: _____

Print Name

Title

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures.)

Approved by the General Counsel of The Redevelopment Agency of the City of San Jose on the ____ day of _____, 200__.

By: _____
Senior Associate Counsel

END OF SECTION 00511

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

SECTION 00512

LABOR COMPLIANCE DOCUMENTATION



Page ____ of ____

.....
(*Unless supply delivery is limited to curbside drop off, suppliers must be listed below.)

PRIME CONTRACTOR: _____

SUBCONTRACTOR (If 2nd or 3rd Tier Sub List): _____

PROJECT NAME: _____

SUBCONTRACTOR/TRUCKER	DESCRIPTION OF WORK	DOLLAR AMOUNT	EXPECTED START DATE
Company: Address: Phone: Project Manager Name: Project Manager Cell Phone:			
Company: Address: Phone: Project Manager Name: Project Manager Cell Phone:			

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Company: Address: Phone: Project Manager Name: Project Manager Cell Phone:			
Company: Address: Phone: Project Manager Name: Project Manager Cell Phone:			

Revised 4.2003

Office of Equality Assurance • 200 East Santa Clara Street, San Jose, CA 95113 • Phone 408.535.8430 • FAX 408.292.6270



LABOR COMPLIANCE WORKFORCE STATEMENT

CONTRACTOR NAME: _____

PROJECT TITLE: _____

In the chart below, list the name, prevailing wage classification(s) to be used, rate of pay and hire date for each employee expected to work on the above project. Include all classifications. See example below.

EMPLOYEE NAME	CRAFT/TRADE	BASIC HOURLY RATE OF PAY (On City of San Jose Contract)	DATE OF HIRE (Indenture Date If Apprentice)
<i>Example: John Smith</i>	<i>Operating Engineer</i>	<i>\$27.31</i>	<i>4/1/1993</i>
<i>"</i>	<i>Laborer</i>	<i>\$23.34</i>	<i>8/15/2000</i>

Questions regarding classifications allowed on San Jose projects should be directed to the Office of Equality Assurance at 408-535-8430. The receptionist will connect you to the Contract Compliance Specialist assigned to this project.

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For Internet access to current prevailing wage rates and benefit information, you may contact the California Department of Industrial Relations web site at <http://www.dir.ca.gov/>. Click on **Statistics & Research**. Scroll down to Current **(Journeyman)**. Scroll down and follow the directions until you locate the trade applicable to your contract. Prevailing wages for City of San Jose contracts will be found under:

- Step One **Statewide**,
- Step Two (A) **Northern California**, or
- Step Four for **Santa Clara County**

Revised 6.2003

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INSTRUCTIONS FOR FILING A FRINGE BENEFIT STATEMENT

California Labor Code and City wage policies (Resolution Nos. 60932, 61144, 61716 and 68900) require the filing of a Fringe Benefit Statement on each contract. The Code requires contractors to pay not less than the basic hourly rate plus fringe benefits as predetermined by the Department of Industrial Relations. The contractor's obligation to pay fringe benefits may be met either by payment of fringes to various plans, funds or programs or by making these payments to the employees as cash in lieu of fringes.

Properly filled out and submitted with supporting documentation, the Fringe Benefit Statement will notify the City of San Jose that your firm should receive credit for employer paid benefits towards the total hourly rate required in your contract.

FRINGE BENEFIT STATEMENT In general, benefits such as Vacation/Holiday, Health & Welfare and Pension are considered fringes for payroll reporting purposes. Payroll deductions for items such as Fund Administration and Dues, paid by the employee, are not considered "Fringes" and therefore will not be figured in any part of the wage schedule. (Please refer to the attached Clarification of Allowable Employer Fringe Benefit Payments and General Prevailing Wage Rate.)

The following instructions have been prepared to assist your firm in completing the City's Fringe Benefit Statement Form. For further clarification, contact the City of San Jose Office of Equality Assurance at:

Office of Equality Assurance
200 East Santa Clara Street
San Jose, California 95113
Phone: 408.535.8430
Fax: 408.292.6270

INSTRUCTIONS

- (A) **Name of Contractor or Subcontractor:** Fill in your firm's name.
- (B) **Project:** Fill in the project title.
- (C) **Classification:** Indicate each prevailing wage classification you expect to use on this contract. You may use additional sheets if necessary or attach a spreadsheet containing the same information to this form.
- (D) Calculate and input the hourly dollar amount for each benefit. If benefit amounts vary from employee to employee, it may be beneficial to break down individual employee benefits in a spreadsheet format and attach the spreadsheet to this form.

Contractors operating under bargaining agreements may obtain the hourly dollar benefit breakdown from their benefit plan administrators. If your firm does not operate under a bargaining agreement, you may use the formulas on the next page to compute hourly benefits. Please be advised that examples are provided only to demonstrate how the formulas are used.

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Annual Calculation. The annual calculation is based on 2080 hours per year (40 hours x 52 weeks per year).

Use the Annual Benefit Amount	Formula: Employee's Basic Hourly Rate x Number of Benefit Hours (8 hours a day x number of days) ÷ 2080 annual hours.
<i>For Example: At \$20 per hour, with 80 vacation hours a year the hourly rate calculates >>>>>></i>	$\$20 \times 80 \text{ hours} = \$1,600 \text{ divided by } 2080 = \$.77$ Fringe Benefit Hourly Amount: \$.77

Monthly Calculation. The monthly calculation factor of 173.33 is based on 2080 hours per year divided by 12 months.

Use the Monthly Benefit Payment	Formula: Monthly benefit plan contribution ÷ 173.33.
<i>For Example: If the employer pays \$200 per month for a medical benefit, the monthly hourly rate calculates >>>>>></i>	$\text{A monthly plan contribution of } \$200 \text{ divided by } 173.33 = \$ 1.15$ Fringe Benefit Hourly Amount: \$ 1.15

(E) Name of the Plan or Fund. To receive credit for employer paid benefit contributions, contributions must be documented. On the Fringe Benefit Statement, indicate the name of the Plan or Fund and attach appropriate plan contribution documentation described below.

- **Health & Welfare Documentation.** For your Health & Welfare Plan, please submit copies of the plan documentation indicating monthly or quarterly billings for the covered benefits (and delineating all benefits per worker), as well as statements and copies of checks transmitted by your firm to the trust fund payments for these benefits.
- **Pension Plan Documentation.** For your Pension Plan, please submit copies of the plan documentation from the Plan Administrator including the plan summary, account balances, monthly or quarterly transmittals into the accounts and copies of checks transmitted by your firm to them as payments into these accounts.
- **Vacation Plan/Paid Holiday Documentation.** Please submit copies of your company's policy for employer paid vacation and holidays. For vacation, please explain how you track the vacation hours for each employee. Additionally, please submit copies of monthly reports or statements from the bank/fund depository showing that the plan and vacation amounts are available for the workers.

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- **Use of Apprentices.** To use an apprentice, your firm must be registered with an apprenticeship program approved by the California Division of Apprenticeship Standards (DAS). To pay a worker at the apprenticeship rate, you must provide documentation that each such worker is registered as an apprentice. If the worker is not registered, the journeyman rate must be paid.

NOTE: Section 1777 of the California Labor Code details contractor obligations to pay training funds into approved apprenticeship programs and the ratio of apprentices to journeymen performing work on a public works contract.

Prior to commencing work on a public work contract of \$30,000 or greater, every contractor is required to submit contract award information to an applicable apprenticeship program. For more information, you may contact the local DAS office at:

State of California
Department of Industrial Relations
Division of Apprenticeship Standards (DAS)
100 Paseo de San Antonio, Room 125
San Jose, CA 95113

The local Division of Apprenticeship Standards may be reached by telephone at 408-277-1273 or by Fax at 408-277-9612. For more information see the following Internet address:
<http://www.dir.ca.gov/DAS/das.html>

(F) Fringes Paid In Cash. Indicate if some or all fringes will be added to the employee's basic hourly rate.

ATTACHMENTS:

Fringe Benefit Statement
Clarification of Allowable Employer Fringe Benefit Payments

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT



LABOR COMPLIANCE FRINGE BENEFIT STATEMENT

CONTRACTOR NAME: _____ (A)

PROJECT: _____ (B)

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)
1. _____ (C)	Vacation (D)	(E)
Documentation of Plan contribution <u>must</u> be returned with this statement Please attach a copy of your most recent transmission into each medical, pension, or profit sharing plan account indicating worker name and amount of contribution.	\$ _____	_____
	Health & Welfare \$ _____	_____
	Pension \$ _____	_____
	Apprentice \$ _____	_____
	Other (specify) \$ _____	_____
	\$ _____	_____
2. _____	Vacation \$ _____	_____
	Health & Welfare \$ _____	_____
	Pension \$ _____	_____
	Apprentice \$ _____	_____
	Other (specify) \$ _____	_____
	\$ _____	_____
3. _____	Vacation \$ _____	_____
	Health & Welfare \$ _____	_____
	Pension \$ _____	_____
	Apprentice \$ _____	_____
	\$ _____	_____

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Other (specify)

\$

(F) ☐ All (or some) fringes are paid in cash by adding the amount to the employee's basic hourly rate.

Company Name (Please Print)

Name and Title (Please Print)

Date

Signature

Revised 8.2003

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT



LABOR COMPLIANCE FRINGE BENEFIT STATEMENT

CONTRACTOR NAME: _____

PROJECT: _____

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)
1.	Vacation	
Documentation of Plan contribution <u>must</u> be returned with this statement Please attach a copy of your most recent transmission into each medical, pension, or profit sharing plan account indicating worker name and amount of contribution.	\$ _____	
	Health & Welfare	
	\$ _____	
	Pension	
	\$ _____	
	Apprentice	
	\$ _____	
	Other (specify)	
	\$ _____	
2.	Vacation	
	\$ _____	
	Health & Welfare	
	\$ _____	
	Pension	
	\$ _____	
	Apprentice	
	\$ _____	
	Other (specify)	
	\$ _____	
3.	Vacation	
	\$ _____	
	Health & Welfare	
	\$ _____	
	Pension	
	\$ _____	
	Apprentice	
	\$ _____	

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

Other (specify)

\$

☐

All (or some) fringes are paid in cash by adding the amount to the employee's basic hourly rate.

Company Name (Please Print)

Name and Title (Please Print)

Date

Signature

Revised 8.2003



INSTRUCTIONS FOR CERTIFIED PAYROLL REPORTING

California Labor Code requires contractors to pay not less than the basic hourly rate plus fringe benefits as predetermined by the Department of Industrial Relations. The contractor's obligation to pay fringe benefits may be met either by payment of fringes to various plans, funds or programs or by making these payments to the employees as cash in lieu of fringes.

The City of San Jose Public Works Payroll Reporting Form is modeled after the Public Works Payroll Reporting Form A-1-131 prepared by the California Department of Industrial Relations. This form has been made available for the convenience of contractors and vendors required by City of San Jose construction, maintenance or service contracts to submit certified payrolls. Properly filled out, this form will satisfy the requirements of California Labor Code Part 7, Section 1776 to file payrolls submitted in connection with contracts for public work and maintenance contracts. (Note: A computer payroll report is acceptable [with Statement of Compliance form attached] only if the same payroll information is included.) All compliance documents are to be accompanied by the Compliance Documentation Transmittal Form provided by the Office of Equality Assurance.

This payroll form provides for the contractor's showing on the face of the payroll all monies paid to the employees, whether as basic rates or as cash in lieu of fringes and provides for the contractor's representation in the statement of compliance attached to the payroll that he/she is paying to others fringes required by the contract and not paid as cash in lieu of fringes.

The following instructions have been prepared to assist your firm in completing certified payroll-reporting forms. For further clarification, contact the City of San Jose Office of Equality Assurance at:

Office of Equality Assurance
200 East Santa Clara Street
San Jose, California 95113
Phone: 408.535.8430
Fax: 408.292.6270

INSTRUCTIONS

- (A) Name of Contractor or Subcontractor: Fill in your firm's name.
- (B) Contractor's License #: Fill in your firm's license #
- (C) Address: Fill in your firm's address.
- (D) Payroll No: Fill in your firm's fiscal year payroll number.
- (E) Week Ending: Fill in the last calendar day reported on the form. If this is a two-week pay period please indicate.
- (F) Self-Insured Certificate # / Workers' Compensation Policy #: Self-explanatory.

(G) Project or Contract No: Project title or Purchase Order Number.

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Name, Address, and Social Security Number of Employee: The employee's full name, address & social security number must be shown on each weekly payroll submitted.

NOTE: Owner-operators performing work on-site must be included on the payroll form with full payroll detail including: number of hours worked, hourly rate of compensation/draw, gross amount earned on the City of San Jose contract and total gross amount received for the reported week.

- (2) Column 2 – Work Classifications: List classification descriptive of work actually performed by employees. Consult the General Prevailing Wage Determination made by the Director of Industrial Relations for proper classification. If additional classifications are deemed necessary, contact the Office of Equality Assurance. Employees may be shown as having worked in more than one classification provided accurate breakdown of hours worked is maintained and shown on the payroll by use of separate line entries.
- (3) Column 3 – Hours Worked: List hours worked each day on City of San Jose Project. List hours worked on non City of San Jose Projects under All Other Work. Enter overtime hours in accordance with California Industrial Welfare Commission Order No. 16-2001.
- (4) Column 4 – Total Hours. Indicate total of straight-time hours worked (**s**) and total over-time hours worked (**o**).
- (5) Column 5 – Rate of Pay, Including Fringe Benefits: In the Hourly Rate of Pay box, list actual basic hourly rate paid the employee for straight time worked plus any cash in lieu of fringes paid the employees. When recording the straight time hourly rate include any cash paid in lieu of fringes. You should show separately that benefits are paid in cash on the Statement of Compliance. (See "FRINGE BENEFITS" below.) For overtime, show overtime hourly rate paid, plus any cash in lieu of fringes paid the employees. Payment of not less than time and one half the basic or regular rate paid is required for overtime.

STATEMENT OF COMPLIANCE. See instructions for completing Statement of Compliance on the next page.

- (6) Column 6 – Gross Amount Earned:
 - a. San Jose Project: Enter the gross amount earned on this project. If part of the employee's weekly wage was earned on a project other than the project described on this payroll, enter two separate gross amounts in column 6. In the first sub-column enter the amount earned on the City of San Jose project, and then enter the total gross amount earned for all projects (including the San Jose project) in the sub-column: Total All Projects.
 - b. Travel & Subsistence: Enter the gross travel and or subsistence payment amount paid to the employee for the week reported.
 - c. Total All Work: Enter the total gross amount earned for the San Jose Project, Travel & Subsistence, and All Other Work for the week reported.
- (7) Column 7 – Deductions: Indicate deductions made in the appropriate box; if more than the indicated deductions are made, show the balance of deductions under "Other"; show actual total under "Total Deductions"; and in an attachment to the payroll describe the deductions contained in the "Other" column. If the employee worked on other jobs in addition to this project, show actual deductions from his weekly gross wage.

(8) Column 8 – Net Wages Paid for Week and Check No.: Required.

Statement of Compliance Required: While this form need not be notarized, the statement is certified under penalty of perjury. Accordingly, the party signing this required statement should have knowledge of the facts represented as true and must be the owner or other person holding interest in the firm.

Check Box A. Contractors who pay all fringe benefits: A contractor who pays fringe benefits into approved plans, funds or programs in amounts not less than were determined in the applicable wage decision shall continue to show on the face of the payroll the basic cash hourly rate and overtime rate paid to his employees just as he has always done. Such contractor shall also check Paragraph A. of the Statement of Compliance that he is paying to approved plans, funds or programs not less than the amount predetermined as fringe benefits for each craft. (Any exceptions shall be noted in check box C.)

Check Box B. Contractors who pay no fringe benefits: A contractor who pays no fringe benefits shall pay to the employee, and insert in the straight time Hourly Rate of Pay column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the contractor shall check Paragraph B of the Statement of Compliance to indicate that he is paying fringe benefits in cash directly to his employees. (Any exceptions shall be noted in check box C.)

Check Box C. Exceptions: Any contractor who is making payment to approved plans, funds or programs in amounts *less* than the wage determination requires is obliged to pay the difference directly to the employees as cash in lieu of fringes. Any exceptions to Paragraph A or B, whichever the contractor may check, shall be entered in Paragraph C. Explain the reason an employee is not paid the total fringes through contribution to a plan or cash in lieu of fringes and provide the hourly dollar amount. An attachment may be used for this purpose.

This section may also be used to explain other withholding such as child support or uniform deductions. Such withholding amounts are reported as OTHER employee deductions on the payroll-reporting form [see column (8) on the attached sample].

ATTACHMENTS:

City of San Jose Public Works Payroll Reporting Form
Statement of Compliance

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

CITY OF SAN JOSÉ PUBLIC WORKS PAYROLL REPORTING FORM

PAGE _____ OF _____



NAME OF CONTRACTOR (A) OR SUBCONTRACTOR		CONTRACTOR'S LICENSE# (B)		ADDRESS (C)																									
PAYROLL NO. (D)		SPECIALTY LICENSE# FOR WEEK _____ING (E)				SELF-INSURED CERTIFICATE # WORKERS' COMPENSATION POLICY# (F)			PROJECT OR CONTRACT NO. (G) PROJECT AND LOCATION																				
(1) NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) WORK CLASSIFICATION	(3) DAY <table border="1" style="width: 100%; text-align: center;"> <tr> <td>M</td><td>T</td><td>W</td><td>TH</td><td>F</td><td>S</td><td>S</td> </tr> </table>							M	T	W	TH	F	S	S	(4) TOTAL HOURS	(5) HOURLY RATE OF PAY	(6) GROSS AMOUNT EARNED			(7) DEDUCTIONS – EMPLOYEE PAID (DOES NOT INCLUDE BENEFIT OR OTHER EMPLOYER PAYMENTS)					(8) <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">NET WAGES PAID FOR WEEK</td> <td style="width: 50%;">CHECK NO.</td> </tr> </table>		NET WAGES PAID FOR WEEK	CHECK NO.
		M	T	W	TH	F	S	S																					
		NET WAGES PAID FOR WEEK	CHECK NO.																										
		DATE																											
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HOURS WORKED EACH DAY																													
Employee:	San Jose Project:	S											SAN JOSE PROJECT	TRAVEL & SUBSISTENCE	TOTAL ALL WORK	FED. TAX	FICA (Soc Sec)	STATE TAX	SDI	HEALTH & WEL-FARE									
		O																											
	All Other Work:	S																											
		O																											
	San Jose Project:	S																											
		O																											

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

Employee:	All Other Work:	S													PENSION	SAVINGS	OTHER*	OTHER*	TOTAL DEDUC-TIONS			
		O																				
	San Jose Project:	S											SAN JOSE PROJECT	TRAVEL & SUBSISTANCE	TOTAL ALL WORK	FED. TAX	FICA (Soc Sec)	STATE TAX	SDI	HEALTH & WEL-FARE		
		O																				
All Other Work:	S														PENSION	SAVINGS	OTHER*	OTHER*	TOTAL DEDUC-TIONS			
	O																					

S = Straight time
O = Overtime
SDI = State Disability Insurance

*OTHER. Any other deductions, whether or not included or required by prevailing wage determinations, must be separately listed. Use extra sheet if necessary.

NOTE: CERTIFICATION STATEMENT MUST BE COMPLETED AND THE ORIGINAL SIGNED STATEMENT ATTACHED TO THE PAYROLL

Office of Equality Assurance · 200 East Santa Clara Street, San Jose, CA 95113 **tel** (408) 535.8430 **fax** (408) 292.6270

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

CITY OF SAN JOSÉ PUBLIC WORKS PAYROLL REPORTING FORM

PAGE _____ OF _____



NAME OF CONTRACTOR		CONTRACTOR'S LICENSE#		ADDRESS																														
OR SUBCONTRACTOR														SPECIALTY LICENSE#																				
PAYROLL NO.		FOR WEEK ENDING						SELF-INSURED CERTIFICATE # WORKERS' COMPENSATION POLICY#				PROJECT OR CONTRACT NO. PROJECT AND LOCATION																						
(1) NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE		(2) WORK CLASSIFICATION		(3) DAY								(4) TOTAL HOURS	(5) HOURLY RATE OF PAY	(6) GROSS AMOUNT EARNED			(7) DEDUCTIONS – EMPLOYEE PAID <small>(DOES NOT INCLUDE BENEFIT OR OTHER EMPLOYER PAYMENTS)</small>					(8)												
				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 12.5%;">M</td><td style="width: 12.5%;">T</td><td style="width: 12.5%;">W</td><td style="width: 12.5%;">TH</td><td style="width: 12.5%;">F</td><td style="width: 12.5%;">S</td><td style="width: 12.5%;">S</td><td colspan="2"></td> </tr> </table>																		M	T	W	TH	F	S	S			NET WAGES PAID FOR WEEK		CHECK NO.	
				M	T	W	TH	F	S	S																								
				DATE																														
HOURS WORKED EACH DAY																																		

Employee:	San Jose Project:	S													SAN JOSE PROJECT	TRAVEL & SUBSISTENCE	TOTAL ALL WORK	FED. TAX	FICA (Soc Sec)	STATE TAX	SDI	HEALTH & WEL-FARE		
		O																						
	All Other Work:	S																PENSION	SAVINGS	OTHER*	OTHER*	TOTAL DEDUCTIONS		
		O																						

Employee:	San Jose Project:	S												SAN JOSE PROJECT	TRAVEL & SUBSISTENCE	TOTAL ALL WORK	FED. TAX	FICA (Soc Sec)	STATE TAX	SDI	HEALTH & WEL-FARE		
		O																					

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

Employee:	All Other Work:	S														PENSION	SAVINGS	OTHER*	OTHER*	TOTAL DEDUC-TIONS					
		O																							
	San Jose Project:	S														SAN JOSE PROJECT	TRAVEL & SUBSISTANCE	TOTAL ALL WORK	FED. TAX	FICA (Soc Sec)			STATE TAX	SDI	HEALTH & WEL-FARE
		O																							
All Other Work:	S														PENSION	SAVINGS	OTHER*	OTHER*	TOTAL DEDUC-TIONS						
	O																								

Revised 4.2003

S = Straight time
O = Overtime
SDI = State Disability Insurance

*OTHER: Any other deductions, whether or not included or required by prevailing wage determinations, must be separately listed. Use extra sheet if necessary.

NOTE: CERTIFICATION STATEMENT MUST BE COMPLETED AND THE ORIGINAL SIGNED STATEMENT ATTACHED TO THE PAYROLL

Office of Equality Assurance · 200 East Santa Clara Street, San Jose, CA 95113 **tel** (408) 535-8430 **fax** (408) 292-6270

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT



**STATEMENT OF COMPLIANCE
(Certified Under Penalty of Perjury)**

PROJECT: _____

PAYROLL PERIOD: _____ to _____
First Day of Pay Period Last Day of Pay Period

I, _____, the undersigned, am
(Name - print)
_____ with the authority* to act
(Position in business)

for and on behalf of _____,
(Name of business and/or contractor)

certify under penalty of perjury that the records or copies thereof submitted and consisting
of _____ are the originals or true, full and
(description / no. of pages)

correct copies of the originals which depict the payroll record(s) of the actual
disbursements by way of

cash, check, or whatever form to the individual or individuals named.

*Must be signed by the owner
or other person holding
interest in the firm.

Signature: _____

Title: _____

Date: _____

- ☐ **A. FRINGE BENEFITS ARE PAID INTO APPROVED PLANS, FUNDS OR PROGRAMS.**
In addition to the basic hourly wage rates paid to each laborer or mechanic listed on the attached payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted under item C below.

B. FRINGE BENEFITS ARE PAID IN CASH.

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

☐

Each laborer or mechanic listed on the attached payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in item C below.

☐

C. EXCEPTIONS Please explain below.

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**SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS
PROJECT**



CERTIFICATION OF POSTING AND DISTRIBUTION

Pursuant to California Labor Code 1773.2, a copy of the current General Prevailing Wage Determination Made By The Director of Industrial Relations must be posted at the public works construction job site. If more than one worksite exists on any project, the applicable rates may be posted at a single location that is readily available to all workers.

Prevailing wage determinations with a single asterisk (*) after the expiration date that are in effect on the date of advertisement of bids remain in effect for the life of the project. Prevailing wage determinations with double asterisks (**) after the expiration date indicate that the basic hourly rate, overtime and holiday pay rates and employer payments to be paid for work performed after this date have been predetermined. If work is to extend past this date, the new rate must be paid. The contractor should contact the Prevailing Wage Unit of the Division of Labor Statistics and Research at (415) 703-4774 or the awarding body to obtain predetermined wage changes.

In addition to the California Labor Code requirement to post, the City of San Jose requires that the prime contractor distribute the current wage determination and any subsequent wage determinations applicable to this project to all subcontractors on this job and certify posting and distribution by signature below.

The undersigned contractor certifies that the current General Prevailing Wage Determination applicable to this project has been distributed and posted as required.

Project Name: _____

Prime Contractor: _____

(Signature of Authorized Representative)

(Authorized Representative's Printed Name)

(Authorized Representative Title)

(Date)

Revised 4.2003

Clarification of Allowable Employer Fringe Benefit Payments And General Prevailing Wage Rate

Excerpt from California Code of Regulations, Title 8, Group 3. Payment of Prevailing Wages Upon Public Works.

Employer Payments. Includes:

- (1) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program for the benefit of employees, their families and dependents, or retirees.
- (2) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees, their families and dependents or to retirees pursuant to an enforceable commitment or agreement to carry out a financially responsible plan or program which was communicated in writing to the workers affected; and
- (3) The rate of contribution irrevocably made by the contractor or subcontractor for apprentice or other training programs authorized by Section 3071 and/or 3093 of the Labor Code.

General Prevailing Rate of Per Diem Wages

(a) Includes:

- (1) The prevailing basic straight-time hourly rate of pay; and
- (2) The prevailing rate for holiday and overtime work; and
- (3) The prevailing rate of employer payments for any or all programs or benefits for employees, their families and dependents, and retirees which are of the types enumerated below:
 - (A) medical and hospital care, prescription drugs, dental care, vision care, diagnostic services, and other health and welfare benefits;
 - (B) retirement plan benefits;
 - (C) vacations and holidays with pay, or cash payments in lieu thereof;
 - (D) compensation for injuries or illnesses resulting from occupational activity;
 - (E) life, accidental death and dismemberment, and disability or sickness and accident insurance;
 - (F) supplemental unemployment benefits;
 - (G) thrift, security savings, supplemental trust, and beneficial trust funds otherwise designated, provided all of the money except that used for reasonable administrative expenses is returned to the employees;
 - (H) occupational health and safety research, safety training, monitoring job hazards, and the like, as specified in the applicable collective bargaining agreement;
 - (I) See definition of "Employer Payments," (3).
 - (J) other bona fide benefits for employees, their families and dependents, or retirees as the Director may determine; and
- (4) travel time and subsistence pay as provided for in Labor Code Section 1773.8.

(b) The term "general prevailing rate of per diem wages" does not include any employer payments for:

- (1) Job related expenses other than travel time and subsistence pay;
- (2) Contract administration, operation of hiring halls, grievance processing, or similar purposes except for those amounts specifically earmarked and actually used for administration of those types of employee or retiree benefit plans enumerated above;
- (3) Union, organizational, professional or other dues except as they may be included in and withheld from the basic taxable hourly wage rate;

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

- (4) Industry or trade promotion;
- (5) Political contributions or activities;
- (6) Any benefit for employees, their families and dependents, or retirees including any benefit enumerated above where the contractor or subcontractor is required by Federal State, or local law to provide such benefit; or
- (7) Such other payments as the Director may determine to exclude.

Prevailing Wage Fringe Benefit Form Attachment

SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS PROJECT

SECTION 00700

GENERAL CONDITIONS

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**SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS
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SECTION 00700

GENERAL CONDITIONS

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 Contract Documents

The Contract Documents consist of the Owner-Contractor Agreement ("Agreement"), including all documents set forth in Exhibit B to the Agreement, the General Conditions of the Contract, Drawings, Specifications, Plans, and all Addenda issued prior to and all Modifications issued after execution of the Agreement. A Modification to the Contract Documents shall be (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Owner pursuant to subparagraph 2.1.7, or (4) a written order for a minor change in the Work issued by the Architect and/or Engineer pursuant to Paragraph 12.4. The Contract Documents do not include Bidding Documents such as the Advertisement or Notice to Contractor - Invitation to Bid or any other documents unless specifically enumerated in Exhibit B to the Owner-Contractor Agreement.

1.1.2 Contract

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect and/or Engineer and the Contractor but the Architect and/or Engineer and Owner shall be entitled to performance of the obligations of the Contractor intended for their benefit and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner, the Architect and/or Engineer and any subcontractor or sub-subcontractor.

1.1.3 Work

The Work comprises the completed construction required of the Contractor by the Contract Documents, and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

**SANTA CLARA STREET LOT / AMGEN DRAINAGE IMPROVEMENTS
PROJECT**

1.1.4 Project

The Project is the total construction of which the Work performed under the Contract Documents is a part.

1.1.5 Contractor

The Contractor is the person or entity identified as such in the Owner-Contractor Agreement. The term "Contractor" means the Contractor or the Contractor's authorized representative.

1.1.6 Owner

The Owner of the Project ("Owner" or "Agency") is the Redevelopment Agency of the City of San Jose or authorized representative of Owner or Agency.

1.1.7 Architect and/or Engineer

The Architect and/or Engineer is Bellecci & Associates, Inc., and its designated agents and representatives for all Work under the Contract Documents.

1.1.8 Subcontractors

A subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the Site. The term subcontractor means a subcontractor or a sub-contractor's authorized representative. The term subcontractor does not include any separate contractor or any separate contractor's subcontractors.

1.1.9 Sub-Subcontractors

A sub-subcontractor is a person or entity who has a direct or indirect contract with a subcontractor to perform any of the Work at the Site. The term sub-subcontractor means a sub-subcontractor or an authorized representative thereof.

1.1.10 Site

The Site is the property depicted on Exhibit A to the Agreement.

1.1.11 City

The City is the City of San Jose, a municipal corporation of the State of California.

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1.1.12 Construction Manual

The Construction Manual includes all bidding documents and contract documents.

1.1.13 Notice of Award of Contract

The Notice of Award of Contract is the written notice to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated herein within the time specified the Owner will sign and deliver the Agreement.

1.1.14 Notice to Proceed

The Notice to Proceed is the written notice given by the Owner to the Contractor fixing the date on which the Contract time will commence to run and on which the Contractor shall start to perform the Contractor's obligations under the Contract Documents.

1.1.15 Equal or Approved Equal

The terms "equal" or "approved equal" shall mean Substitutions approved by the Architect and/or Engineer.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Agreement shall be signed in not less than quadruplicate by the Owner and the Contractor.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the Site, reviewed the Contract Documents, become familiar with the local conditions under which the Work is to be performed, and has correlated personal observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. All work that is consistent with the Contract Documents and is reasonably inferable therefrom as being necessary to produce the intended results is required. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings unless the context or express provisions of the Contract Documents indicate another meaning.

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1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings and Plans shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 The intent of the Contract Documents is to prescribe the details for construction and completion of the Work in accordance with the terms of the Contract. Where Contract Documents describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used.

1.2.6 Any discrepancies between Contract Documents and conditions of the Site, or in the layout given by stakes, points or instructions, discovered by the Contractor shall be promptly brought to the attention of the Owner by written notice. Work done after such discovery, until authorized by the Owner, will be done at the Contractor's risk.

1.2.7 In general, Specifications indicate qualities of materials and workmanship and Drawings indicate dimensions, locations, quantities and details of construction. Quantities indicated are estimates only. Figured dimensions take precedence over scaled measurements. Detailed Drawings and Specifications take precedence over general Drawings and Specifications. Supplementary details and instructions, approved revisions of later date, and addenda take precedence over original documents, information, and earlier addenda. In the event of ambiguity in quantity or in quality, the greater quantity and the better quality shall govern. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified.

1.3 OWNERSHIP AND USE OF DOCUMENTS

All Drawings, Plans, Specifications and copies thereof furnished by the Architect and/or Engineer are and shall remain the property of the Owner. They are to be used only with respect to the Work and are not to be used on any other project. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Owner on request at the completion of the Work.

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ARTICLE 2

ADMINISTRATION OF THE CONTRACT

2.1 ADMINISTRATION OF THE CONTRACT

2.1.1 The Architect and/or Engineer will assist the Agency with administration of the Contract as hereinafter described.

2.1.2 The Architect and/or Engineer will be the Owner's representative during construction and until final payment to all contractors is approved. The Architect and/or Engineer will advise and consult with the Owner. All communications from the Contractor will be made directly to the Owner. All instructions to the Contractor shall be forwarded through the Owner. The Architect and/or Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.1.13.

2.1.3 The Architect and/or Engineer will determine in general that the Work of the Contractor is being performed in accordance with the Contract Documents and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. No act or omission of the Architect and/or Engineer will relieve Contractor of responsibility or liability for defects and deficiencies in the work.

2.1.4 The Architect and/or Engineer will visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents.

2.1.5 Except as provided elsewhere in the Contract Documents, the Architect and/or Engineer will not be responsible for or have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. Except as provided elsewhere in the Contract Documents, the Architect and/or Engineer will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work. The Contractor, with due diligence shall provide competent quality assurance and inspection of all phases of the Work prior to a formal request by the Contractor to have the Owner review the Work for completion.

2.1.6 The Architect and/or Engineer and Owner shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities and/or equipment for such access so that the Architect

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and/or Engineer and the Owner may perform their functions under the Contract Documents.

2.1.7 The Architect and/or Engineer will be the initial interpreter of the aesthetic and technical requirements of the Contract Documents. The Contractor may make written request to the Owner for interpretations necessary for the proper execution or progress of the Work. The Owner will refer such written requests to the Architect and/or Engineer, who will render such interpretations within a reasonable time after his receipt of the request. Where the Contractor has requested an interpretation from the Owner, or been notified by the Owner that such interpretation has been requested, any Work done before receipt of such interpretations, if not in accordance with same, shall be removed and replaced or adjusted as directed by the Owner without additional expense to Owner.

2.1.8 All interpretations of the Architect and/or Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in graphic form.

2.1.9 The Architect and/or Engineer will have authority to reject Work which does not conform to the Contract Documents, and to require special inspection or testing, but will take such action only after consultation with the Owner. Whenever, in the Architect and/or Engineer's opinion, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Architect and/or Engineer will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.8.2 whether or not such Work be then fabricated, installed or completed. However, the Architect and/or Engineer's authority to act under this Subparagraph 2.1.9, and any decision made by it in good faith either to exercise or not to exercise such authority shall not give rise to any duty or responsibility of the Architect and/or Engineer to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.1.10 The Contractor shall submit all Shop Drawings, Product Data and Samples to the Owner for the Architect and/or Engineer's review.

2.1.11 The Architect and/or Engineer will review and take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and the information given in the Contract Documents.

2.1.12 The Owner, with the assistance of the Architect and/or Engineer, will conduct inspections to determine the dates of Substantial Completion of the Work and Final Completion of the Work, and will receive all written warranties and related documents required by the Contract and assembled by the

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Contractor. The Owner will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.10.

2.1.13 The duties, responsibilities and limitations of authority of the Architect and/or Engineer as the Owner's representative during construction, as set forth in the Contract Documents, will not be modified or extended without written consent of the Owner.

2.1.14 In case of the termination of the employment of the Architect and/or Engineer, the Owner shall appoint a new Architect and/or Engineer whose status under the Contract Documents shall be that of the former Architect and/or Engineer.

2.2 CONFERENCES

At any time during progress of the Work, the Owner shall have authority to require the Contractor and any subcontractors to attend a job-site conference. Any notice of such conference shall be duly observed and complied with by the Contractor and Subcontractors. These conferences may be held on a weekly basis.

ARTICLE 3

OWNER

3.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.1.1 The Owner shall make available to Contractor, as necessary, all surveys and documents, in the Owner's possession, relied upon in the Contract Documents to describe the physical characteristics, legal limitations and utility locations for the Site of the Project.

3.1.2 Contractor will be furnished free of charge three (3) copies of Drawings, Plans, Project Manuals, and Addenda for execution of the Work. Modifications to the Contract Documents issued after execution of the Contract will be furnished as follows: written material - one (1) copy; drawings - two (2) copies.

3.1.3 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein including, without limitation, those relating to Work By Owner or By Separate Contractors, Payments and Completion, and Insurance set forth in Articles 6, 9 and 11, respectively.

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3.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct defective Work as required by Paragraph 13.2, or fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

3.3 OWNER'S RIGHTS AND DUTIES

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, and without prejudice to any other remedy the Owner may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor any and all costs of correcting such deficiencies, including but not limited to, compensation for the Architect and/or Engineer's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor shall be based on the consultation with the Architect and/or Engineer, if necessary. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

3.4 OWNER'S RIGHT TO USE OR POSSESS

3.4.1 The Owner reserves the right, prior to Substantial Completion, to possess, or use, any completed part or parts of the Work. The exercise of this right shall in no way constitute an acceptance of such parts, or any part of the Work, nor shall it in any way affect the dates and times when progress payments shall become due from the Owner to the Contractor or in any way prejudice the Owner's rights in the Contract, or any bonds guaranteeing the same. The Contract shall be deemed completed only when all the Work contracted has been duly and properly performed and accepted by the Owner.

3.4.2 In exercising the right to possess or use completed parts of the Work prior to the Substantial Completion thereof, the Owner shall not make any use which will materially increase the cost to the Contractor, without increasing the Contract Sum, nor materially delay the completion of the Contract, without extending the time for completion.

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ARTICLE 4

CONTRACTOR

4.1 GENERAL

4.1.1 The Contractor's office at the Project Site is hereby designated as the legal address of the Contractor for the receipt of documents, samples, notices, letters and other articles of communication.

4.1.2 At the time the contract is awarded, all contractors and subcontractors shall be properly licensed in accordance with the provisions of Chapter 9 of Division 3 of the Business and Professions Code.

4.2 REVIEW OF CONTRACT DOCUMENTS

The Contractor shall carefully study and compare the Contract Documents and shall at once report in writing to the Owner any error, inconsistency, omission or lack of coordination that may be discovered. The Contractor shall not be liable to the Owner or the Architect and/or Engineer for any damage resulting from any such errors, inconsistencies or omissions or lack of coordination in the Contract Documents, unless the Contractor recognized such error, inconsistency or omission and failed to report it to the Owner. The Contractor shall perform no portion of the Work at any time without executed Contract Documents or, where required, reviewed Shop Drawings, Product Data or Samples for such portion of the Work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and shall coordinate all portions of the Work under the Contract, including the relations of the various trades to the progress of the Work, and other contractors who may be working at the Project site pursuant to other prime contracts, subject to the overall review of the Owner and in accordance with the provisions of the Contract Documents.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and any other persons performing any of the Work under a contract with the Contractor.

4.3.3 The Contractor shall not be relieved from the Contractor's obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect and/or Engineer in its

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administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.8 by persons other than the Contractor.

4.3.4 Nothing in the Contract Documents shall be interpreted to make the Contractor an agent of the Owner.

4.4 LABOR, MATERIALS & EQUIPMENT

4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.4.2 The Contractor shall at all times enforce strict discipline and good order among the Contractor's employees, including, but not limited to, appropriate public behavior and decorum, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned them.

4.4.3 Each machine or unit of equipment shall be operated by an experienced operator skilled in handling the particular make of machine or unit of equipment in use, at a speed or rate of production not to exceed that recommended by the manufacturer.

4.4.4 Equipment not suitable to produce the quality of work required will not be permitted to operate on the Project. Plants shall be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity and of such character as to insure the production of sufficient material to carry the work to completion within the time limit. The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements and, when ordered by the Owner, shall remove unsuitable equipment from the work and discontinue the operation of unsatisfactory plants.

4.4.5 All vehicles used to haul materials over existing traveled ways shall be equipped with pneumatic tires and legal wheel loads.

4.4.6 The Contractor shall use only such equipment on the work and in such state of repair, that the emission of sound therefrom is within the noise tolerance level of that equipment, as established by accepted standards of the industry.

4.4.7 Should the Owner determine that the muffling device on any equipment used on the work is ineffective or defective so that the noise tolerance of such equipment, as established by accepted standards of the industry is exceeded, such equipment shall not, after such determination by the Owner, be

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used on the work until its muffling device is repaired or replaced so as to bring the noise tolerance level of such equipment within such standards.

4.4.8 The mention of any specific duty or liability imposed upon the Contractor shall not be construed as a limitation or restriction of any general liability or duty imposed upon the Contractor by this Contract. Such references to specific duties and liabilities are made for the purpose of explanation.

4.5 WARRANTY

The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2.

4.6 TAXES

The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Contractor shall obtain and pay for all permits, governmental fees, and licenses required to perform the Work. The Contractor and subcontractors shall be required to obtain and pay for all municipal permit and inspection fees and for all construction permits and inspection fees. The Contractor shall obtain and pay for permits from the City of San Jose and the California Department of Transportation for use of portions of streets adjacent to the Site as necessary for Contractor's operations, as well as any other permits, fees and licenses.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.7.3 If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes and regulations in any respect, the Contractor shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.7.4 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the

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Owner, the Contractor shall assume full responsibility therefore and shall bear all costs attributable thereto.

4.7.5 The Contractor shall send proper notices, make all necessary arrangements, and perform all other services required in the care and maintenance of public utilities which are within his influence and under his direction. The Contractor shall assume all responsibility concerning the same for which the Owner may be liable.

4.7.6 The Contractor shall pay all fees for required work to be performed on site utilities and services. These fees shall be included in the Contract Sum.

4.8 ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom the Contractor makes a reasonable objection.

4.8.2 Unless otherwise provided in the Contract Documents, these allowances shall cover:

- .1 the cost to the Contractor, less any applicable trade discount, of the materials and equipment and all other costs and expenses necessary to perform the required work, including taxes;
- .2 the cost of bonds, insurance and other costs required by the Contract Documents and the Contractor's overhead and profit for the original allowance shall be included in the Contract Sum and **not** in the original allowance amount. Subcontractors' overhead and profit shall be limited to fifteen percent (15%). (This actual amount will be determined when documents are prepared and the work of the allowance is bid.)
- .3 whenever the cost is greater or less than the amount of the allowance, the Contract Sum shall be adjusted accordingly by Change Order. The Change Order shall be written for the difference between the actual cost of the work and the amount of the original allowance included in the Contract Sum. If the amount of the actual allowance exceeds the amount of the original allowance, the extended amount shall be subject to overhead and profit markup for Contractor, and other costs as noted in 4.8.2.2. above. If the amount of the

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actual allowance is less than the amount of the original allowance, no credit shall be taken for Contractor's overhead and profit included in the Contract Sum for the original allowance.

4.9 DUST CONTROL

The Contractor shall provide as much water, dust palliative, or other authorized material, and the labor and devices necessary to spread such material, as the Agency deems necessary to control dust. The Contractor shall provide any and all dust control required by the City or any regional, state or federal governmental entity having jurisdiction over the Site or the Project. The payment for dust control shall be considered as included in other items of work and no additional compensation shall be made therefore, unless otherwise provided by the Contract Documents.

Whenever the Contractor is negligent in providing adequate dust control, the Agency shall order the Contractor to provide such adequate dust control, and if the Contractor does not comply forthwith with such order, the Agency shall have the authority to suspend the Work, wholly or in part, for such period as the Agency may deem necessary until the Contractor provides adequate dust control to the satisfaction of the Agency, or the Agency may provide such dust control and charge the cost to provide adequate dust control to the Contractor by deducting such cost from periodic payments to the Contractor as such costs are incurred by the Agency.

4.10 POLLUTION CONTROL

The Contractor shall not, in connection with the Work, discharge any smoke, dust or other contaminants into the atmosphere or discharge any fluids or materials into any lake, river, stream, or channel that will violate any federal, state or local laws or regulations of any legally constituted authority. The Contractor shall control accumulation of waste materials and rubbish and dispose waste materials and rubbish off-site in at least weekly intervals. Burning of materials is not permitted.

4.11 SUPERINTENDENT

4.11.1 The Contractor shall employ a competent Project superintendent and necessary assistants who shall be in attendance at the Site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case. Contractor shall supply the name of the Superintendent within five (5) days after the issuance of the Notice to Proceed.

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4.11.2 The Owner shall be supplied at all times with the names and telephone numbers of at least two persons in charge of or responsible for the Work, who can be reached for emergency work 24-hours a day, seven days a week.

4.11.3 Where the Contractor is comprised of two or more persons, co-partnerships or corporations, functioning on a joint venture basis, Contractor shall designate in writing to the Owner the name of its authorized representative who will have supreme authority to direct the Work and to whom communications and directives permitted or required by this Agreement will be given by the Owner.

4.12 CONTRACTOR'S CONSTRUCTION SCHEDULE

The Contractor, within five (5) calendar days of issuance of the Notice to Proceed, shall prepare and submit for the Owner's review a Contractor's Construction Schedule for the Work which shall provide for expeditious and practicable execution of the Work.

4.13 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the Site, on a current basis, one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and reviewed Shop Drawings, Product Data and Samples. These shall be available to the Architect and/or Engineer and the Owner. The Contractor shall advise the Owner on a current basis of all changes in the Work made during construction. All record drawings and documents shall be current to include all changes and clarifications on a monthly basis for review by the Owner prior to monthly billing. Billing will include a certification by the Contractor that the drawings and documents record are current as a part of the complete monthly billing.

4.14 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.14.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.14.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

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4.14.3 Samples are physical examples which illustrate materials, equipment or workmanship, and establish standards by which the Work will be judged.

4.14.4 The Contractor shall prepare, review, submit, and revise, as necessary, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

4.14.5 By preparing, approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that the Contractor has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the Work, the Project and the Contract Documents.

4.14.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect and/or Engineer's review of Shop Drawings, Product Data or Samples under Subparagraph 2.1.10, unless the Contractor has specifically informed the Architect and/or Engineer in writing of such deviation prior to submission for review and the Architect and/or Engineer, with Owner approval has given written acceptance to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect and/or Engineer's review of them. All changes to the Contract Documents shall be clearly noted on the submittal for review by the Architect and/or Engineer.

4.14.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect and/or Engineer on previous submittals.

4.14.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been reviewed by the Architect and/or Engineer and resubmitted, if necessary, as provided in Subparagraph 2.1.10. All such portions of the Work shall be in accordance with approved submittals.

4.15 USE OF SITE

4.15.1 The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the Site with any materials or equipment. The Contractor shall provide adequate protection of all Work until final completion and acceptance. The Contractor shall take particular precautions to protect all existing items of work to remain; existing buildings and structures; underground

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pipng and other facilities. All damaged or disturbed items shall be replaced at the expense of Contractor prior to acceptance.

4.15.2 The Contractor shall coordinate all of the Contractor's operations with, and secure approval from, the Owner before using any portion of the Site. This Project may be one of several construction projects in the immediate area, including the Site. Contract work for other construction within and adjacent to the right-of-way may be in progress during the working period for this Contract. Progress schedules for such other work when available, should be inspected by the Contractor. No guarantee can be made by the Owner that such other work will actually be performed as indicated by the schedules. The Owner will not be responsible for delay caused by the disagreement or any lack of cooperation between contractors. No additional compensation will be allowed for delay, inconvenience or interference to the Contractor's operations by reason of such other work.

4.15.3 Contractor shall, at Owner's election, utilize any reserve gates set aside for use of Contractor, its suppliers and employees. Contractor shall perform its obligations under this Contract notwithstanding the presence of pickets at said reserve gate.

4.16 COMMUNICATIONS

The Contractor shall forward all communications directly to the Owner except as otherwise provided in the Construction Documents.

4.17 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees, shall defend all suits or claims for infringement of any copyright, trademark or patent rights and shall save the Owner, the City, the Architect and/or Engineer, and all of their agents, employees, successors and assigns harmless from loss on account thereof, except that the Owner or the Architect and/or Engineer, as the case may be, shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is selected by such person or such person's agent. If the Contractor, has reason to believe that the design, process or product selected is an infringement of a copyright, trademark or patent, the Contractor shall be responsible for such loss unless such information is promptly given to the Owner and also to the Architect and/or Engineer.

4.18 INDEMNIFICATION

4.18.1 To the fullest extent permitted by law, the Contractor shall fully protect, indemnify, defend and hold harmless the Owner, the City, the Architect and/or Engineer, and all of their respective officers, employees, agents, successors and assigns from and against any and all liability, claim or demand,

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arising out of or resulting from, either directly or indirectly, the performance of the Work or the conditions of the Site, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any intentional act, negligence (active or passive), default or omission of the Contractor, or of any subcontractor, any of the Contractor's or subcontractors' suppliers, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Except to the extent applicable law requires further exclusions, Contractor's obligations to indemnify and hold the City and Agency harmless exclude only such portion of any claim, loss or liability which is due to the active negligence or willful misconduct of the Agency, City or their employees. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.18. The Contractor at its own expense, and risk, shall defend all legal proceedings that may be brought against the Owner, the City, the Architect and/or Engineer, and their successors, assigns, officers, employees, and agents, on any such liability, claim or demand, and satisfy any resulting judgment that may be rendered against any of them. Contractor's obligations under this Section shall survive the expiration or sooner termination of this Contract.

4.18.2 In any and all claims against the Owner, the City, the Architect and/or Engineer or any of their officers, agents, employees, successors or assigns by any employee of the Contractor, any subcontractor, any supplier of the Contractor or subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor or any supplier of either of them under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.18.3 The obligations of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Architect and/or Engineer, its agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect and/or Engineer, its agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

4.19 ADDITIONAL PROVISIONS

Nothing in this Contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the

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Work or the soil. All such materials shall become the property of the Owner upon being so attached or affixed.

ARTICLE 5

SUBCONTRACTORS

**5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR
PORTIONS OF THE WORK**

As required by the California Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100 *et seq*, Contractor shall have submitted with Contractor's Bid for Owner's approval a list of all subcontractors whose work represents an amount in excess of one-half of one percent (0.5%) of the Contract Sum, setting forth the name and location of the place of business of each such subcontractor and a brief description of the portion of work which will be done by each such subcontractor. Before starting work under the Contract, a subcontractor must be included in the list of subcontractors submitted by the Contractor with the bid, if so required by the Subletting and Subcontracting Fair Practices Act. Contractor shall not substitute any subcontractor in place of the subcontractors designated in such list except as approved by the Owner and as permitted by the Subletting and Subcontracting Fair Practices Act. Contractor shall not subcontract any portion of the work in excess of one half of one percent (0.5%) of the Contract Sum for which no subcontractor was listed in the bid, or permit any subcontract to be assigned, transferred, or performed by anyone other than the designated subcontractor except as approved by Owner and as permitted by the Subletting and Subcontracting Fair Practices Act.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 By an appropriate agreement, written where legally required for validity, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Architect and/or Engineer. Said agreement shall preserve and protect the rights of the Owner and the Architect and/or Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor Agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with their sub-

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subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Paragraph 5.2, and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such Documents available to their sub-subcontractors.

5.2.2 The Contractor shall be fully responsible for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.

5.2.3 When a portion of the Work subcontracted by the Contractor is not being performed in a manner satisfactory to the Owner, the Owner shall notify the Contractor and shall inform him of the deficiencies in the sub-contractor's execution of the Work. If the subcontractor fails to correct such deficiencies within ten (10) days after Contractor's receipt of notification from the Owner, the Contractor shall cause the subcontractor to be removed immediately from the Work.

5.2.4 Contractor agrees to bind in writing all subcontractors and materials suppliers to the terms of the General Conditions of the Contract for Construction and to the terms of the entire agreement between Owner and Contractor.

5.2.5 Contractor shall require each subcontractor and materials supplier to agree in writing to utilize any reserve gate set aside, at Owner's election, for use by said subcontractor, its suppliers and employees, or said materials supplier. Contractor shall require each subcontractor and materials supplier to agree in writing to perform its obligations under this Contract notwithstanding the presence of pickets at said reserve gate.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other work on the Site under these or similar Conditions of the Contract. If the Contractor claims that delay, damage or

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additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the Site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner will provide for the coordination of the work of the Owner's own forces with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate the Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive the Work.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore.

6.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner, or to other work or property on the Site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor wrongfully delay or cause damage to the work or property of any separate contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall, at the Owner's election, defend such proceedings at the Contractor's expense. If any judgment or award against the Owner arises from any such litigation proceeding, whether defended by Owner or by Contractor, the Contractor shall pay or satisfy said judgment or award and shall reimburse the Owner for all attorneys' fees and court costs which the Owner has incurred or for which the Owner is liable.

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6.3 OWNER'S RIGHT TO CLEAN UP

The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste, rubbish, the Contractor's tools, construction machinery, equipment, surplus materials and other property. If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up, the Owner may clean up and charge the cost thereof to the contractors responsible.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be governed by the law of the place where the Project is located.

7.1.2 Rules of law shall prevail over any provision contained in any of the Contract Documents which may be in conflict thereto or inconsistent therewith and the remaining provisions of the Contract shall, nevertheless, remain in full force and effect.

7.1.3 The Contractor shall conform to and abide by all local, state and federal building, sanitary, health and safety laws, rules, and regulations, including all City ordinances and regulations. To the best knowledge and belief of the parties, the Contract now contains no provision that is contrary to federal or state law or any ruling or any regulations of a federal or state agency. Should, however, any provisions of the Contract at any time during its term be in conflict with any such law, ruling or regulation, and such provisions of the Contract are thus held inoperative, the remaining provisions of the Contract shall, nevertheless, remain in full force and effect.

7.1.4 All Contractors and subcontractors employed upon the Work shall and will be required to conform to the provisions of the Labor Code of the State of California, including Prevailing Wage Provisions as presented in ARTICLE 17 herein, and shall also comply with all rules, regulations and Labor Laws of the federal government and the various acts amendatory and supplementary thereto, and all other laws, ordinances and legal requirements.

7.1.5 Whenever the provisions of any section of the Specifications may conflict with any agreement or regulation of any kind in force among members of

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any trade association, union or council which regulates or distinguishes what work shall or shall not be included in the work of any particular trade, the Contractor must make all necessary arrangements to reconcile any such conflict without recourse to the Architect and/or Engineer or Owner.

7.1.6 The Contractor shall protect, defend, indemnify and hold harmless the Owner and Architect and/or Engineer, their employees, agents, successors or assigns from any and all claims, demands, actions, loss and damage arising by reason of a breach of any of the provisions of this Article.

7.2 SUCCESSORS AND ASSIGNS

The Owner and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other.

7.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by an express mail service, registered or certified mail to the last business address known to the party giving the notice.

7.4 CLAIMS FOR DAMAGES

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of the other party's employees, agents or others for whose acts such party is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

7.5 RESOLUTION OF CLAIMS LESS THAN OR EQUAL TO \$375,000

7.5.1 In the event that Contractor submits a claim for an extension of time, payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract the payment of which is not otherwise expressly provided for or an amount the payment of which is disputed by the Agency, such claim shall be in writing and shall include all documents necessary

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to substantiate the claim. All claims must be submitted within the time limits set forth in these General Conditions including, but not limited to, paragraph 12.3.

7.5.2 In the event that said claim is in an amount less than Fifty Thousand Dollars (\$50,000.00), the Agency shall either respond in writing to the claim within forty-five (45) days of receipt of the claim, or may request, in writing, any additional documentation supporting the claim or relating to defenses or claims the Agency may have against Contractor.

Agency shall respond to Contractor's claim within fifteen (15) days of receipt of the requested additional information, or within a period of time no greater than that taken by Contractor in producing the requested additional information, whichever is greater.

7.5.3 In the event that said claim is for an amount in excess of fifty thousand dollars (\$50,000.00) and less than or equal to three hundred seventy-five thousand dollars (\$375,000.00), the Agency shall respond in writing to Contractor's claim within 60 days of receipt of the claim, or may request, in writing, any additional documentation supporting any claim the Agency may have against Contractor.

Agency shall respond to Contractor's claim within thirty (30) days of receipt of the requested additional information, or within a period of time no greater than that taken by Contractor in producing the requested additional information, whichever is greater.

7.5.4 In the event that Contractor disputes the Agency's written response to Contractor's claim as set forth in either 7.5.2 or 7.5.3, above, or the Agency fails to respond to the Contractor's claims within the time prescribed in this paragraph, Contractor shall, within 15 days thereof demand, in writing, a conference with Agency to meet and confer for settlement of the issues in dispute. Agency shall then schedule such conference within 30 days of receipt of said document.

7.5.5 In the event that the meet and confer conference fails to resolve the claim or any portion thereof, Contractor may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

7.5.6 The following procedures shall apply to all civil actions filed to resolve claims pursuant to paragraph 7.5.5.

- (a) Within sixty (60) days, but not earlier than thirty (30) days of the filing of any claim, the matter shall be submitted to nonbinding mediation. Agency and Contractor shall then have fifteen (15) days to agree upon the selection of a

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disinterested third party as mediator. Mediation shall begin within thirty (30) days of selection of mediator, and shall be concluded within fifteen (15) days thereafter.

- (b) If the nonbinding mediation fails to resolve the claim, the parties shall submit the matter to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The arbitrator shall be experienced in construction law.
- (c) The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title of Part 4 of the Code of Civil Procedure) shall apply to the proceeding, consistent with the rules pertaining to judicial arbitration.
- (d) If either the Agency or Contractor appeals an arbitration award and does not obtain a more favorable judgment on appeal, that party shall pay the costs and fees and attorney fees incurred on appeal by the responding party.
- (e) The Agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

7.5.7 Notwithstanding the above provisions, the Agency shall pay any portion of any claim that is undisputed unless otherwise provided in these General Conditions. In addition, any and all claims between the Contractor and Agency in an amount greater than \$375,000.00 shall not be subject to the provisions set forth in this paragraph 7.5.

7.6 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.6.1 Following Award of the Contract and prior to commencing any of the Work, the Contractor shall provide the Owner with a 100 percent Performance Bond and Labor and Material Payment Bond, using the bond forms provided by the Owner or an Owner approved similar bond. During the Contract Time as defined in Article 8, bond amount(s) shall be increased for increased value of changes in the Work.

7.6.2 At the election of Owner, Contractor shall provide, within ten (10) days of receipt of each progress payment and of the final payment, unconditional waivers and release of lien rights, signed by Contractor and each of its

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subcontractors and materials suppliers, in the form established therefore by Section 3262 of the Civil Code of the State of California.

7.6.3 Surety companies shall familiarize themselves with all of the conditions and provisions of this Contract, and they waive the right of special notification of any change or modification of this Contract or of decreased or increased work or of the cancellation of the Contract, or of any other acts by the Owner or its authorized agents, under the terms of this Contract.

Notwithstanding the provisions of any other contract or agreement, the failure of any surety company or insurance company to receive notification of any of the aforesaid changes shall in no way relieve said surety company of its obligations under this Contract.

7.7 RIGHTS AND REMEDIES

7.7.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

7.7.2 No action or failure to act by the Owner or the Architect and/or Engineer shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.8 TESTS

7.8.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Owner timely notice of its readiness so the Architect and/or Engineer and the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

7.8.2 If the Architect and/or Engineer or the Owner determines that any Work requires special inspection, testing or approval which Subparagraph 7.8.1 does not include, the Owner will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.8.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Architect

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and/or Engineer's and the Owner's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.8.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and the Contractor shall promptly deliver them to the Agency.

7.8.4 If the Architect and/or Engineer or the Owner wishes to observe the inspections, tests or approvals required by the Contract Documents, they will do so promptly and, where practicable, at the source of supply.

7.9 TRADE NAMES AND ALTERNATIVES

For convenience in designation on the Contract Documents, certain equipment, articles, materials, products, things, or services may be designated under a trade name or the name of a manufacturer and his catalog information, and be followed by the words "or equal". Except in those instances where the Agency Board has made a finding under Section 3400 of the Public Contract Code that a brand name specification is needed for one of the designated purposes, all equipment, articles, materials, products, things or services, shall also be designated under at least one (1) additional brand or trade name of comparable quality or utility. In cases where only one (1) brand or trade name is known to the Owner, only one (1) brand or trade name is listed. The use of alternative equipment or an article, material, product, thing or service which is of equal quality and bearing required characteristics for the purpose intended will be permitted, subject to the approval of the Owner. The Contractor shall obtain the Owner's approval in accordance with the following requirements:

Within fifteen (15) days after Notice to Proceed, or as necessary so as not to delay progress of the Work, the Contractor shall submit data substantiating any request for a substitution of "an equal" item.

The burden of proof as to the comparative quality and suitability of alternative equipment or articles, materials, products, things, or services, shall be upon the Contractor. Contractor shall furnish, at his own expense, all information necessary or related thereto as required by the Owner. The Owner shall be the sole judge as to the comparative quality and suitability of alternative equipment, articles, materials, products, things or services, and its decision shall be final.

7.10 EMPLOYMENT OF APPRENTICES

7.10.1 Attention is directed to the provisions of Section 1777.5 and 1777.6 of the California Labor Code concerning the employment of apprentices by the

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Contractor or any subcontractor. The Contractor and any subcontractor shall comply with the requirements of Section 1777.5 and 1777.6 in the employment of apprentices.

7.10.2 Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship Standards and its branch offices.

7.10.3 The Contractor shall make such travel and subsistence payments to each workman needed to execute the Work as are established in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code.

7.10.4 To the greatest extent possible, opportunities for training and employment arising from this Contract shall be given to lower income residents in the Civic Plaza Redevelopment Project Area.

7.11 PENALTY FOR COLLUSION

If, at any time, it is determined by the Agency that the person, firm or corporation to whom the Contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the Contract shall be null and void, and the Contractor and his sureties shall be liable for loss or damage which the Owner may suffer thereby, and the Owner may advertise for new bids for said work.

7.12 AGREEMENT TO ASSIGN ANTITRUST CLAIMS

7.12.1 In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (chapter 2 commencing with section 16700 of part 2 of division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

7.12.2 In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (chapter 2 commencing with section 16700 of part 2 of division 7 of the Business and

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Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

7.13 DIVISION OF INDUSTRIAL SAFETY PERMITS

7.13.1 The Contractor shall, before beginning any excavation or trench work, five (5) feet or more in depth, secure, in addition to any permits required from the City, a permit "to perform Excavation or Trench work", from the State of California, Division of Industrial Safety.

7.13.2 In order to receive a permit "to perform Excavation or Trench work", the Contractor must submit a detailed plan showing his proposed design for shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five (5) feet or more in depth. If such plan varies from the shoring system standards established by the construction safety orders, the plan shall be prepared by a registered civil or structural engineer in the State of California. The Contractor shall also submit the detailed plan to the Owner for approval.

7.13.3 The Contractor shall file a copy of the permit "to perform excavation or trench work", with the Owner, at least five (5) days before the beginning of any excavation or trench work.

7.14 INSPECTION BY OTHER JURISDICTIONS

Whenever any part of the Work to be performed is under the jurisdiction or control or is to be paid for, in whole or in part, by another public subdivision entity or jurisdiction, including but not limited to: The City of San Jose, United States Government, State of California, County of Santa Clara, or the San Jose-Santa Clara Water Pollution Control Plant, such Work shall be subject to inspection by the proper officials of such entities or jurisdictions and it must pass inspection, in addition to Agency inspection and such other inspection as may be otherwise provided for in the Contract Documents.

7.15 ARCHEOLOGICAL AND PALEONTOLOGICAL RIGHTS

Notwithstanding anything to the contrary herein, in the event any archeological or paleontological objects within the Project are discovered during the course of the Work, the Agency shall have and retain all right, title and interest to such objects and shall have the further right, during the course of the Contract, to examine or cause to have examined, the Site of the Work for any such objects and to

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perform or have performed archeological or paleontological excavations and all other related work to explore for, discover, recover and remove such objects from the Site of the Work.

In the event the work of archeological or paleontological examination and related work delays the Contractor's work, Contractor shall be entitled to an extension of time to complete the Work equal to the number of days Contractor is thus delayed, provided that the Contractor makes a claim in the manner set forth in the Owner-Contractor Agreement.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the Work is on the date specified on the Notice to Proceed issued by the Owner.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect and/or Engineer when construction is sufficiently complete, in accordance with the Contract Documents, and Article 9.9 herein, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it was intended.

8.1.4 The term day as used in the Contract Documents shall mean calendar day unless specifically designated otherwise.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion of the Work within the Contract Time.

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8.3 HOURS OF LABOR

8.3.1 The Contractor shall forfeit to the Owner, as a penalty, the sum of Twenty-five Dollars (\$25.00) for each worker employed in the execution of the Contract for each calendar day during which such laborer, worker or mechanic is required or permitted to labor more than eight (8) hours in violation of the provisions of Sections 1810 to 1816, inclusive, of the Labor Code of the State of California.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

Following the issuance of the Notice to Proceed, the Contractor shall submit to the Owner a Schedule of Values. The Contractor's Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. If the Schedule of Values is not approved by the Owner, a revised Schedule of Values shall be submitted that is mutually acceptable to the Contractor and the Owner. Progress Payments shall be made to the Contractor based on the approved Schedule of Values.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 The Contractor shall prepare an itemized Application for Payment based upon work completed by the close of the twentieth day of each month and shall submit said Application to the Owner for Owner's review and approval no later than the twenty-fifth day of each month. The Application for Payment shall be supported by certified payroll indicating that prevailing wages have been paid, along with other data substantiating the Contractor's right to payment as the Owner may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. Items and values of work included in the Application for Payment shall be as detailed as in the Contractor's Schedule of Values.

9.3.2 Upon approval of the Application for Payment, the Owner will pay ninety percent (90%) of amounts due Contractor on account of progress

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payments. Retained percentages are for the sole protection and benefit of the Owner, and no other person, firm or corporation shall be entitled to receive any part thereof. Sums withheld as retained percentages may be expended by the Owner to correct or remedy any of the conditions described in subparagraph 9.7.1. Except for amounts applied by Owner to correct or remedy any such conditions, the full contract retainage will be paid to Contractor at the time of final payment. Until the time of final payment, Owner shall remain the legal and beneficial owner of all retained percentages.

9.3.3 Pursuant to the terms and conditions set forth in Public Contracts Code Section 22300, the Contractor may substitute acceptable securities in lieu of ten percent (10%) retention which will be withheld by Agency as retention to ensure Contractor's performance under the Contract. Such substitution of securities in lieu of retention shall be at the Contractor's sole expense. The Contractor shall be the beneficial owner of any security substituted for the ten percent (10%) retention and shall receive any interest thereon. Any such security shall be returned to the Contractor at the time of final payment. Acceptable security shall include those securities listed in California Government Code § 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts or standby letters of credit. Contractor will not be credited with interest for any portion of the Contract Retainage after it is paid by Owner to correct or remedy any of the conditions described in Subparagraph 9.7.1.

9.3.4 At the sole discretion of the Executive Director of the Owner, when the Work is at least 50 percent complete and if progress is satisfactory, remaining Progress Payments may be paid in full, and any retention held in excess of five percent (5%) of the Contract Amount may be released to Contractor. Under no circumstances shall retention be reduced below five percent (5%) of the Contract Amount until Final Completion and Final Payment as set forth in Section 9.10. Contractor shall provide Consent of Surety prior to reduction of retainage. Contractor shall apply for reduction in retainage to Owner in writing.

9.3.5 The full Contract retainage may be reinstated if the Work and its progress do not remain satisfactory to the Owner, or if Surety withholds its consent, or for other good and sufficient reasons.

9.3.6 Unless otherwise provided in the Contract Documents, payments will be made on account of fabricated materials or equipment not incorporated in the Work but delivered and suitably stored at the Site and, if approved in advance by the Owner, payments may similarly be made for fabricated materials or equipment suitably stored at some other location agreed upon in writing. Payments for fabricated materials or equipment stored on or off the Site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such

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fabricated materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the Site for those materials and equipment stored off the Site. Applications for payments shall be based upon that portion of the Contract Sum properly allocable to labor, fabricated materials and equipment either incorporated in the Work or suitably stored at the Site, up to five (5) days prior to the date on which the Application for Payment is submitted. Payments for fabricated materials and equipment stored off-site within fifty (50) miles of the Project will be made, subject to Owner's approval, if Contractor provides invoice, lien release, certificate of insurance covering stored materials, and stores material in an approved, bonded Shelter. Owner and Owner's representatives shall have the right of inspection of materials stored off-site.

9.3.7 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the Site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES FOR PAYMENT

The Owner will, following the receipt of a properly prepared Application for Payment and certified payroll indicating that prevailing wages have been paid, process it for payment. The Owner shall notify the Contractor in writing of the reasons for withholding the Application or recommending payment for a lesser amount than set forth in the Application as provided in Paragraph 9.7.1.

9.5 PAYMENTS FOR MOBILIZATION

9.5.1 Payments for mobilization shall be made in accordance with this subparagraph. Mobilization shall consist of all permits, insurance and bonds, preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the site; for the establishment of all offices, buildings, utilities and other facilities necessary for the work on the project; and for all other work and operations which must be performed or costs incurred prior to beginning work on the various contract items on the Site. Under no circumstance, shall the cost of mobilization activities exceed two (2) percent of the Contract price.

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9.5.2 Mobilization, where approved, will be paid for at the contract lump sum price. The lump sum price for mobilization shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in mobilization as specified herein. When the Contract does not include a contract pay item for mobilization as above specified, full compensation for any necessary mobilization required shall be considered as included in the prices paid for the various contract items of work involved and no additional compensation will be allowed therefor.

9.5.3 Payments for mobilization will be made in accordance with the schedules set forth below.

- .1 When the Owner has approved payments, not including the amount earned for mobilization, of ten percent (10%) or more of the Contract Sum, fifty percent (50%) of the contract item price for mobilization may be included in the Application Payment.
- .2 When the Owner has approved payments, not including the amount earned from mobilization, of twenty percent (20%) or more of the Contract Sum, seventy-five percent (75%) of the contract item price for mobilization may be included in the application payment.
- .3 When the Owner has approved payments not including the amount earned from mobilization of fifty percent (50%) or more of the Contract Sum, ninety percent (90%) of the contract item price from mobilization may be included in the application payment. The retention of fund provisions of subparagraph 9.3.2 shall apply to the contract lump sum item for mobilization.

9.5.4 The adjustment provisions in Article 12 shall not apply to the contract lump sum item for mobilization. If contract items are adjusted as provided in Article 12, any mobilization costs applicable to such items of work will be deemed to have been recovered by the Contractor by the payments made for mobilization, and mobilization costs will be excluded from consideration in determining compensation under Article 12.

9.6 PROGRESS PAYMENTS

9.6.1 The Contractor following receipt of payment by the Owner shall promptly pay each subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such sub-contractor's Work, the

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amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such subcontractor's Work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to their sub-subcontractors in similar manner.

9.6.2 The Owner may, on request and at the Owner's discretion, furnish to any subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of Work done by such subcontractor.

9.6.3 Neither the Owner nor the Architect and/or Engineer shall have any obligation to pay or to see to the payment of any monies to any subcontractor.

9.6.4 No certification of a progress payment, any progress payment, or any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.7 PAYMENTS WITHHELD

9.7.1 The Owner, following consultation with the Architect and/or Engineer, may decline to approve and may withhold the Application for Payment in whole or in part. If the Owner determines failure by the Contractor to perform its contractual obligations, the Owner will notify the Contractor as provided in Paragraph 9.4. The Owner may also decline to provide payment or, because of subsequently discovered evidence or subsequent observations, the Owner may nullify the whole or any part of any Applications for Payment previously issued to such extent as may be necessary to protect the Owner from loss because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to subcontractors, or for labor, materials or equipment;
- .4 proof that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 proof that the Work cannot be completed within the Contract Time;

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- .7 persistent failure to carry out the Work in accordance with the Contract Documents;
- .8 failure to submit an original or an updated Project Schedule in accordance with the Contract Documents;
- .9 failure to submit proper shop drawings;
- .10 failure to submit certification for compliance with Section 4.13;
- .11 failure to submit certified payroll indicating that prevailing wages have been paid.

9.7.2 When the grounds described in Subparagraph 9.7.1 above are removed, payment shall be made for amounts withheld because of them.

9.8 TIME OF PAYMENT

9.8.1 The Owner will make Progress Payments within a time agreed upon prior to signing of Contract, or where no prior agreement is made, within thirty (30) days of receipt of an approved Application for Payment.

9.8.2 Owner retains right to make partial payments or reduced payment during the period of any dispute and Contractor shall be obligated to continue all Work.

9.9 SUBSTANTIAL COMPLETION

9.9.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Paragraph 8.1.3 and this paragraph, the Contractor shall prepare and submit to the Owner and Architect and/or Engineer a written notice stating (1) the Work is ready to be accepted as substantially complete, (2) the date of substantial completion and (3) a list of items that remain to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Owner and Architect and/or Engineer determine that the Work or designated portion thereof is substantially complete, the Owner and Architect and/or Engineer will prepare a Certificate of Substantial Completion of the Work that will be provided to Contractor, that will include a punchlist of items to be completed pursuant to the Contract Documents and the Date of Substantial Completion of the Work. The Certificate of Substantial Completion

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shall also state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall complete the items listed therein required for Final Completion. The Certificate of Substantial Completion of the Work shall be submitted to the Contractor for his written acceptance of the responsibilities assigned to them in such Certificate. The Project shall not be deemed substantially complete until the Owner executes the Certificate of Substantial Completion. In addition, the Contractor must obtain and submit to the Owner, prior to the Date of Substantial Completion, all necessary permits for occupancy or the date of Substantial Completion shall be deemed postponed until the Owner receives these permits. If desired by Owner, portions of the Work, as completed, may be placed in service. The Contractor shall give proper access to the Work for this purpose. Such use and operation shall not constitute an acceptance or substantial completion of the Work or that portion placed in service. Nothing in this section shall be construed as relieving the Contractor from liability for defects due to faulty construction or from its responsibility to correct defective work or materials.

9.9.2 Upon Substantial Completion of the Work or designated portion thereof, and upon application by the Contractor, the Executive Director of Owner at his/her sole discretion shall have the authority to reduce the Contractor's retention balance down to no less than five percent (5%) of the contract sum.

9.9.3 Warranties required by the Contract Documents shall commence on the date of final acceptance by Owner or from the Date of Substantial Completion of the Work or designated portion thereof, whichever is earlier, unless otherwise provided in the Certificate of Substantial Completion of the Work or designated portion thereof. Contractor shall obtain any manufacturer's extended warranties as are necessary to comply with this requirement.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Following the Owner's issuance of the Certificate of Substantial Completion of the Work or designated portion thereof, and the Contractor's completion or correction of the Work in accordance with the requirements of the Certificate of Substantial Completion, the Contractor shall forward to the Owner a written notice that the Work is ready for final inspection and acceptance, and shall also forward to the Owner a final Application for Payment. Upon receipt, the Owner will make the necessary evaluations and will promptly make such inspection. When the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will issue a Certificate for Payment. All prior partial estimates and payments shall be subject to correction on the final estimate and payment. No payment shall be construed to be an approval or acceptance of any defect in work or improper materials.

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9.10.2 Neither the final payment nor the remaining retainage shall become due until the Contractor submits to the Owner, (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, and (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 Except for those claims previously made by the Contractor in writing and identified by the Contractor as unsettled at the time of final Application for Payment, acceptance by the Contractor of final payment shall be and shall operate as a release to Owner, its successors, assigns, officers and employees and the Architect and/or Engineer of and from any and all other claims, demands, causes of action, obligations, damages or liabilities, whether or not known or suspected, which Contractor ever had or claims to have had as of or prior to the acceptance of final payment arising directly or indirectly out of, or in any way connected with any of the transactions, series of transactions or matters in connection with the Work and every act and neglect of the Owner, its officers, employees, successors, assigns, and the Architect and/or Engineer relating to or arising out of the Work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this contract for the Contractor's bond for faithful performance and Contractor's payment bond.

9.10.4 All provisions of this Agreement, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment prior to the Date of Substantial Completion of the Work.

9.10.5 Final payment shall be made to Contractor no earlier than thirty-five (35) days after acceptance of the Work by the Owner, which acceptance shall be evidenced by the recordation of a Notice of Completion of the Work in the Office of the County Recorder. However, the Owner may accept Completion of the Contract and have the Notice of Completion recorded when the entire work shall have been completed to the satisfaction of the Owner, except for minor corrective items, as distinguished from incomplete items. If the Contractor fails to correct all such items prior to the expiration of the thirty-five day period, immediately following acceptance of completion, the Owner shall withhold from the final payment an amount equal to 150% of the estimated cost of correction of all such

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items until the last of the items have been corrected. At the end of the thirty-five (35) day period, if there are items remaining to be corrected, the Owner may request the Contractor in writing to make immediate correction of said items; and if the Contractor fails to make such correction within ten (10) days of the date of the written notice, the Owner may make the correction and deduct the costs from the amount withheld therefor.

9.11 DELAYS

9.11.1 The Date for Substantial Completion of the Work shall not be extended except in accordance with the provisions of the Owner-Contractor Agreement (Extension of Scheduled Completion Date).

9.11.2 In the event that a suspension of the Work is ordered by the Owner due to failure on the part of the Contractor to perform any provisions of the Contract, the days on which the suspension of the Work is in effect shall be considered calendar days and the dates set forth in the Owner-Contractor Agreement shall not be extended and the Contractor shall not be relieved of any claim for liquidated damages, engineering or inspection charges or any other charges which the Owner may have.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damages, injury or loss to:

- .1 all employees on the Work and all other persons who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of the Contractor or any of the Contractor's subcontractors or sub-subcontractors;

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- .3 other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 the work of the Owner or other separate contractors.

Contractor shall take all reasonable precautions to protect the work from vandalism or other abuse.

Contractor, not Owner or Architect and/or Engineer, shall remain fully responsible for the disposition and the exposure to persons of materials, whether or not hazardous. Contractor remains fully responsible for the handling of and the removal of products and systems and shall take necessary measures to protect employees, subcontractors, general public, design consultants and others. If temporary removal is required of any of the items referred in Subparagraph 10.2.1.3 above, or if damage occurs thereto, the Contractor shall restore or replace same at his own expense. Items replaced shall be of the same kind, quality and size.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 No explosives shall be stored or used on the Site unless specifically approved by the Owner and all applicable federal, state and local regulatory agencies.

10.2.5 The Contractor shall promptly remedy all damage or loss to any property referred to in Subparagraphs 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and for which the Contractor is responsible under Subparagraphs 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner, the Architect and/or Engineer or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor.

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The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 4.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

10.2.7 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.2.8 The Contractor shall so conduct his operations as to offer the least possible obstruction and inconvenience to the public and he shall have under construction no greater length or amount of Work than he can prosecute properly with due regard to the rights of the public. Unless otherwise provided elsewhere in the Contract Documents, all traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. Spillage resulting from hauling operations along or across the traveled way shall be removed immediately at the Contractor's expense.

10.2.8.1 Existing traffic signal and right-of-way lighting systems shall be kept in operation for the benefit of the traveling public during progress of the Work, and City forces may continue routine maintenance of existing systems.

10.2.8.2 Convenience of abutting owners along the right-of-way shall be provided for as far as practicable. Convenient access to driveways, houses, and buildings along the line of the Work shall be maintained and temporary approaches to crossings or intersecting right-of-ways shall be provided and kept in good condition. When the abutting property owner's access across the right-of-way line is to be eliminated, or to be replaced under the contract or by other access facilities, the existing access shall not be closed until the replacement facilities have been completed.

10.2.8.3 In order to expedite the passage of public traffic through or around the Work or where ordered by the Owner, the Contractor shall install signs, lights, flares, barricades and other facilities for the sole convenience and direction of public traffic. Also, where directed by the Owner, Contractor shall provide and station competent flagpersons whose sole duties shall consist of directing the movement of public traffic through or around the Work.

10.2.8.4 The Contractor shall be required to pay the cost of replacing or repairing all facilities installed for the convenience of direction or warning of public traffic, that are lost or damaged by reason of Contractor's operations to such an extent as to require replacement or repair.

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10.2.8.5 Except as otherwise provided elsewhere in the Contract Documents, full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various contract items of Work and no additional allowance will be made therefor.

10.2.9 It is the Contractor's responsibility to provide for the safety of the public during construction.

10.2.9.1 Whenever the Contractor's operations create a condition hazardous to traffic or to the public, Contractor shall furnish at Contractor's own expense, and without cost to the Owner, such flagpersons and guards as are necessary to give adequate warning to the public of any dangerous conditions to be encountered and Contractor shall furnish, erect, and maintain such fences, barricades, lights, signs, and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public.

10.2.9.2 All traffic control signs, barricades, lights and other warning and safety devices shall conform to the current "Manual of Warning Signs, Lights, and Devices for Use in Performance of Work upon Highways" issued by the State of California Business and Transportation Agency, Department of Transportation.

10.2.9.3 Should the Contractor appear to be neglectful or negligent in furnishing warning devices and taking protective measures, as above provided, the Owner may direct attention to the existence of a hazard and the necessary warning devices shall be furnished and installed by the Contractor at his expense. Should the Owner point out the inadequacy of warning devices and protective measures, such action on the part of the Owner shall not relieve the Contractor from responsibility for public safety or abrogate his obligation to furnish and pay for these devices and measures.

10.2.9.4 The installation of general right-of-way illumination shall not relieve the Contractor of his responsibility for furnishing and maintaining any of the protective facilities hereinbefore specified.

10.2.9.5 Should the Contractor be neglectful, or negligent in furnishing and/or maintaining warning and protective facilities as required herein, the Owner may furnish and/or maintain such facilities and charge Contractor therefor by deducting the cost thereof from periodic progress payments due the Contractor as such costs are incurred by the Owner.

10.2.9.6 In the event the Contractor does not provide such flagpersons and guards as are required by this section, the Owner may request the San Jose Police Department to the job and the cost to the Owner for providing flagpersons and guards shall be deducted from any periodic progress payments due the Contractor.

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10.2.9.7 No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the right-of-way open for use by public traffic.

10.2.9.8 Full compensation for conforming to all of the provisions of this Section shall be considered as included in the prices paid for the various contract items of Work and no additional allowance will be made therefor.

10.2.10 Due care shall be exercised to avoid injury to existing right-of-way improvements or facilities, utility facilities, adjacent property, and roadside trees and shrubbery that are not to be removed.

10.2.10.1 Roadside trees and shrubbery that are not to be removed and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines under or above ground, sewer and water lines, all right-of-way facilities, and any other improvements or facilities within or adjacent to the Work, shall be protected from injury or damage, and if ordered by the Owner, the Contractor shall provide and install suitable safeguards, approved by the Owner, to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition as good as when the Contractor entered upon the Work, or as good as required by the Contract Documents, if any such objects are a part of the Work being performed under the Contract.

10.2.10.2 The Contractor shall examine all bridges, culverts and other structures on or near the Work, over which Contractor will move materials and equipment and before using them, Contractor shall properly strengthen such structures, where necessary. The Contractor will be held responsible for any and all injury or damage to such structures caused by reason of Contractor's operations.

10.2.10.3 The fact that any underground non-utility facility or any existing service lateral or appurtenances, wherever the presence of such lateral or appurtenances can be inferred from the presence of other visible facilities such as buildings, meter and junction boxes on or adjacent to the construction site, are not shown upon the Plans shall not relieve the Contractor of his responsibility under this Section. It shall be the Contractor's responsibility to ascertain the existence of any underground improvements, except for unmarked existing main and trunkline utility facilities, which may be subject to damage by reason of his operations.

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10.2.10.4 Full compensation for furnishing all labor, materials, tools and equipment and doing all the work involved in protecting property as above specified, shall be considered as included in the prices paid for the various contract items of Work and no additional compensation will be made therefor.

10.2.11 As between the Owner and the Contractor, the Owner shall assume responsibility for the timely removal, relocation or protection of existing main or trunkline utility facilities located on the Site, unless such utility facilities are identified in the Plans and Specifications. The Contractor shall be compensated under the provisions of Article 12 for any costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. The Contractor shall not be assessed liquidated damages for delaying completion of the Project when such delay was caused by the failure of the Owner or the owner of the utility to provide for removal or relocation of such utility facilities. If the Contractor, while performing the Work, discovers utility facilities not identified by the Owner, the Contractor shall immediately notify the Owner and utility in writing. The public utility, where it is the owner, shall have the sole discretion to perform repairs or relocation work or to permit the Contractor to perform repairs or relocation work at a reasonable price.

10.3 EMERGENCIES

In any emergency affecting the safety of persons or property the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. The Contractor shall immediately notify the Owner in writing of such actions. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

ARTICLE 11

INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall procure and maintain for the duration of this Contract, at its sole cost and expense, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the Work by, or on behalf of, the Contractor.

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11.1.2 The minimum scope of insurance coverage shall be at least as broad as:

- a. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
- b. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall also be included for all owned, non-owned and hired autos; and
- c. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

There shall be no endorsement reducing the scope of coverage required above, unless approved by the City's Risk Manager.

11.1.3 The minimum limits of insurance shall be no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

11.1.4 Any deductibles or self-insured retentions must be declared to, and approved by the City's Risk Manager. At the option of Agency, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Agency, the City, their officer, employees, agents and contractors and the Agency's Architect and/or Engineer; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the Agency.

11.1.5 The policies are to contain, or be endorsed to contain, the following provisions:

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1. Commercial General Liability and Automobile Liability Coverages.
 - a. The Agency, the City, their officials, employees, agents and contractors, and the Agency's Architect and/or Engineer, are to be covered as additional insureds as respects liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, the City, their officials, employees, agents and contractors including the Agency's Architect and/or Engineer; and
 - b. The Contractor's insurance coverage shall be primary insurance as respects the Agency, the City, their officials, employees, agents and contractors, and the Agency's Architect and/or Engineer. Any insurance or self-insurance maintained by the Agency, the City, their officials, employees, agents or contractors, or the Agency's Architect and/or Engineer shall be excess of the Contractor's insurance and shall not contribute with it; and
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, the City, their officials, employees, agents, or contractors, or the Agency's Architect and/or Engineer; and
 - d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; and
 - e. Coverage shall contain a waiver of subrogation in favor of the Agency, the City, their officials, employees, agents and contractors, and the Agency's Architect and/or Engineer.
2. Workers' Compensation and Employers Liability Coverages shall contain a waiver of subrogation in favor of the Agency,

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the City, their officials, employees, agents, and contractors,
and the Agency's Architect and/or Engineer.

3. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the Agency, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

11.1.6. Contractor shall furnish the Agency (in the manner provided below) with certificates of insurance and with original endorsements affecting coverage required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Copies of all the required endorsements shall be attached to the certificates of insurance which shall be provided by the insurer as evidence of the stipulated coverages. This proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City's Risk Manager:

The City of San Jose – Human Resources
Risk Management
200 East Santa Clara Street, 2nd Floor Wing
San Jose, CA 95113-1905

11.1.7 Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

11.1.8 Insurance is to be placed with insurers acceptable to the City's Risk Manager. All policies, endorsements, certificates and/or binders shall be subject to approval by the City's Risk Manager as to form and content. These insurance requirements are subject to amendment or waiver if so approved in writing by the City's Risk Manager.

11.1.9 Notwithstanding any other provisions of the Contract Documents inconsistent with the provisions of this Subparagraph, the Contractor shall not be responsible for the cost of repairing or restoring damage to the Work caused by an Act or Acts of God occurring after the Contract for the Work is entered into. For the purpose of this Subparagraph, Acts of God shall include only earthquakes and tidal waves, when such occurrences or conditions and effects have been proclaimed a disaster or state of emergency by the Governor of the State of California or by the President of the United States.

11.1.10 Contractor shall assist in every manner possible in the reporting and investigation of any accident and, upon request, to cooperate with all

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interested insurance carriers in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required for the resolution of any claim or lawsuit.

11.1.11 Agency in no way purports to be a bailee, and is therefore not responsible in any way for any damage to the property of others including, but not limited to, the property of Contractor, the Contractor's contractor, or their respective agents, employees and invitees.

11.2 CONTRACTOR'S RESPONSIBILITY FOR WORK

Until completion of the contract and final acceptance of the Work by the Owner, the Contractor shall have the charge and care of and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work, or from any other cause. The Contractor shall rebuild, repair, restore, and make good all injuries, losses or damages to any portion of the Work occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except as otherwise expressly provided in subparagraph 11.10.

In case of suspension of Work from any cause whatever, the Contractor shall be responsible for the Work as above specified and he shall also be responsible for all materials delivered to the Work or materials which have been furnished by the Owner. If ordered by the Owner, the Contractor shall at Contractor's own expense, properly store materials which have been furnished by the Owner. Such storage by the Contractor shall be on behalf of the Owner, and the Owner shall at all times be entitled to the possession of such materials, and the Contractor shall promptly return the same to the Site when requested. The Contractor shall not dispose of any of the materials so stored except on written authorization from the Owner.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

12.1.1 A Change Order is a signed written order to the Contractor showing the recommendation of the Architect and/or Engineer, the approval of the Architect and/or Engineer and the authorization of the Owner, issued after execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum and/or the Contract Time. The Contract Sum and the contract time may be changed only by Change Order. Any Change Order signed by the Contractor shall indicate the Contract Sum and the Contract Time. Adjustments of Contract Time, Work or Sum may be issued without notice to

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Sureties, and absence of such notice shall not relieve the Sureties of any responsibilities (See Sub-paragraph 7.6.3). No Change Order shall operate to authorize a time extension, unless such Change Order specifies such extension. If no time extension has been granted in such Change Order, Contractor agrees that in no event shall Contractor make any subsequent claim relating to the items covered by such Change Order.

12.1.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Contract Change Order will not become effective until approved by the Owner.

12.1.3 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways at discretion of the Owner (all changes, unless otherwise directed by Owner, shall be determined by Method .1):

- .1 Change Order Work will be estimated using the following criteria:
 - a. All labor will be calculated based on Nationally Recognized Labor Calculators; MCA for Mechanical NECA for Electrical and Means for all other labor. Only the lowest column rate will be accepted. No multipliers will be allowed unless previously approved in writing by Owner. Contractor shall provide Owner with the latest copy of applicable standard manual noted above.
 - b. Material prices will be based on "Trade Book" wholesale column or other Architect and/or Engineer/Owner acceptable wholesale price standards. If these are not available for the material noted, they shall be priced at quoted wholesale discounted values. Contractor shall provide Owner with a copy of the "Trade Book".
 - c. Equipment will be priced at Manufacturer quoted/ invoiced costs.
 - d. Rental Equipment will be priced using State Equipment Rental Guides. Contractor shall provide Owner with a copy of the latest Rental Guide.

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- e. Contractor's Overhead¹ and Profit Mark-Up for subcontractor work and bonds and insurance cost² shall not exceed 5% of subcontractors' cost (excluding overhead and profit for subcontractor).
 - f. Contractor's Overhead¹ and Profit Mark-Up for Contractor's self-performed work and bonds and insurance cost² shall not exceed 15% of Contractor's cost.
 - g. Total Change Order Mark-Up of Overhead¹ and Profit, including all levels of subcontractors and contractor combined, shall not exceed 20% cumulative. Change Orders shall clearly indicate all levels of mark-up.
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by the method provided in Sub-paragraph 12.1.4;

Should the Contractor disagree with any terms or conditions set forth in an approved Change Order which Contractor has not executed, Contractor shall submit a written protest to the Architect and/or Engineer, within ten (10) days after receipt of said approved Change Order. The protest shall state the points of disagreement, and if possible, the contracts specification references, quantities, and costs involved. If a written protest is not submitted, payment will be made as set forth and such payment shall constitute full compensation for all work included therein or required thereby. Such unprotested approved Change Orders will be considered as executed Change Orders.

12.1.4.1 If none of the methods set forth in subparagraphs 12.1.3.1, 12.1.3.2 or 12.1.3.3 is agreed upon, the Contractor, provided a written order signed by the Owner is received, shall promptly proceed with the Work involved. The cost of

¹ The term Overhead as used above shall include the following:

- all indirect labor such as management, supervision, engineer and/or consultanting, drafting, estimating, secretarial and accounting.
- all field office expenses including office supplies
- all corporate office expenses
- small tools (capitalized under \$500.00 each) (Except tools unique to the change)
- transportation expenses including company owned vehicles, and reasonable airfare, car rental, hotel/motel and meals.

² The cost of bonds and insurance shall be limited to .5% of the cost of the coverage.

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such Work shall then be determined by the Architect and/or Engineer, on the basis of the actual and reasonable expenditures and savings of those performing the Work attributable to the change, including in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, the Contractor shall keep and present, in such form as the Owner or the Architect and/or Engineer may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Material charges shall be substantiated by valid copies of vendor's invoices. Contractor shall keep full and complete records of the cost of such work and shall permit the Architect and/or Engineer and Owner to have such access thereto as may be necessary to assist in the determination of the compensation payable for such work. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: actual cost of materials, including sales tax and cost of delivery, except that if Contractor does not furnish satisfactory evidence of the cost of such materials, it shall be deemed to be the lowest current wholesale price at which such materials are available in the quantities concerned delivered to the job site; actual cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums; actual rental value of equipment and machinery, except that in no case shall such rental value exceed the rental rates of established distributors or equipment rental agencies serving the area, plus thirty-three and one-third percent (33-1/3%) for the cost of fuel, oil, lubrication and field repairs and maintenance; and the additional costs of supervision and field office personnel directly attributable to the change.

12.1.4.2 The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect and/or Engineer. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change. If the price change is in addition to the Contract Sum, it shall include the Contractor's and subcontractors' overhead and profit. Overhead and profit is limited to that specified in 12.1.3.1e and f. On any change which involves a net credit to the Owner, no allowance for overhead or profit shall be figured.

12.1.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted.

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12.2 CONCEALED CONDITIONS

The Contractor shall promptly and before the following conditions are disturbed, notify the Owner in writing of any:

- .1 Material that was not previously identified in the Construction Manual and that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, Class III disposal site in accordance with provisions of existing law.
- .2 Subsurface or latent physical conditions at the Site differing from those indicated by information about the Site made available to bidders prior to the deadline for submitting bids.
- .3 Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

The Owner shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between the Agency and the Contractor over whether or not the conditions materially differ, or involve hazardous waste not previously identified, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all work to be performed under the Contract Documents. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

12.3 CLAIMS FOR ADDITIONAL COST

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, the Contractor shall give the Owner written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim

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shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Owner after consultation with the Architect and/or Engineer. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order. The expense or responsibility for any change or damage incurred or caused by Contractor for additional work performed without an authorized Change Order shall rest entirely with the Contractor.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.1.7, (2) any order by the Owner to stop the Work pursuant to Paragraph 3.3 where the Contractor was not at fault, or any such order by the Architect and/or Engineer as the Owner's representative, (3) any written order for a minor change in the Work issued pursuant to Paragraph 12.4, or (4) delay in payment by the Owner, the Contractor shall make such claim as provided in Subparagraph 12.3.1.

12.3.3 All claims submitted by the Contractor shall include the following personal certification:

'I, _____, BEING THE _____
(MUST BE AN OFFICER) OF _____ (GENERAL
CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY
UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO
PERSONALLY CERTIFY AND ATTEST THAT: I HAVE
THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR
ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME,
AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN
GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND
ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY
REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE
CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND,
FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL
CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE
12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND
FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR
CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES,
IMPRISONMENT, AND/OR OTHER SEVERE LEGAL
CONSEQUENCES.'

By _____
Title"

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12.4 MINOR CHANGES IN THE WORK

The Architect and/or Engineer will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through the Owner, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the Owner, or to requirements specifically expressed in the Contract Documents, it must be uncovered for Owner's and/or Architect and/or Engineer's observation and replaced, all at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Architect and/or Engineer or the Owner has not specifically requested to observe prior to its being covered, either may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate contractor as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work rejected by the Architect and/or Engineer or the Owner as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion of the Project and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Architect and/or Engineer's additional services made necessary thereby.

13.2.2 If, within one year after the Owner's recordation of the Notice of Completion of the Work, or within one year after acceptance by the Owner of designated equipment, or within such longer period of time as may be prescribed

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by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such defective condition. This obligation shall survive both final payment for the Work or designated portion thereof and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the Site all portions of the Work which are defective or nonconforming and which have not been corrected under Paragraph 4.5 or Subparagraphs 13.2.1 and 13.2.2, unless removal is waived by the Owner.

13.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Paragraph 4.5 or Subparagraphs 13.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.3.

13.2.5 If the Contractor does not proceed with the correction of such defective or nonconforming Work within a reasonable time fixed by written notice issued by the Owner, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may, upon ten additional days' written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Architect and/or Engineer's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time periods noted in Subparagraph 13.2.2, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which

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proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

13.2.8 Where special warranties are required under various sections of the Specifications, they are to be considered a part of the Contract and shall be subject to the terms of this Article for the time stated in the special warranties.

13.3 ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK

If the Owner prefers to accept defective or non-conforming Work, the Owner may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

If the Work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon seven (7) additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages; provided, however, that Owner may, in Owner's sole discretion, within seven (7) days after receipt of such written notice of termination of the Contract, declare its election to maintain the Contract in full force and effect; and provided, further, that if Owner exercises said option Owner shall compensate Contractor, in an amount to be agreed upon by the parties for the fair and reasonable value, including Contractor's reasonable overhead and profit, of maintaining said Contract in full force and effect.

14.2 TERMINATION FOR DEFAULT

14.2.1 If the Contractor is adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor refuses or fails, except in cases

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for which extension of time is provided, to supply enough properly skilled workers or proper materials, or fails to make prompt payment to subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, and fails within seven (7) days after receipt of written notice to commence and continue correction of such default, neglect or violation with diligence and promptness, the Owner may, without prejudice to any other remedy the Owner may have, terminate the employment of the Contractor and take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods the Owner may deem expedient.

14.2.2 If the costs of finishing the Work, including compensation for the Architect and/or Engineer's additional services made necessary by the Contractor's default, exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall survive the termination of the Contract.

14.3 TERMINATION FOR CONVENIENCE

14.3.1 The performance of the Work may be terminated by the Owner in accordance with this clause in whole, or from time to time in part, whenever the Owner shall determine that such termination is in the best interests of the Owner. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of the Work is terminated, and the date upon which termination becomes effective. After receipt of a notice of termination, and except as otherwise directed by the Owner, the Contractor shall:

- (a) Stop all work under the contract except that specifically directed to be completed prior to acceptance.
- (b) Perform work the Owner deems necessary to secure the project for termination.
- (c) Remove equipment and plant from the site of the work.
- (d) Take such action as is necessary to protect materials from damage.
- (e) Notify all subcontractors and suppliers that the contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Owner.

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- (f) Provide the Owner with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including its storage location, and such other information as the Owner may request.
- (g) Dispose of materials not yet used in the work as directed by the Owner. It shall be the Contractor's responsibility to provide the Owner with good title to all materials purchased by the Owner hereunder, including materials for which partial payment has been made.
- (h) Subject to the prior written approval of the Owner, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Owner, the Contractor shall assign to the Owner all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
- (i) Furnish the Owner with the documentation required to be furnished by the Contractor under the provisions of the contract including, on projects in which Federal and State funds are involved, all documentation required under the Federal and State requirements included in the contract.
- (j) Take such other actions as the Owner may direct.

14.3.2 Acceptance of the contract as hereinafter specified shall not relieve the contractor of responsibility for damage to materials. The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:

The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Section 9.3.6, and for materials furnished by the Owner for use in the work and unused shall terminate when the Owner certifies that such materials have been stored in the manner and at the locations the Owner has directed.

The Contractor's responsibility for damage to materials purchased by the Owner subsequent to the issuance of the notice that the contract is to be terminated shall terminate when title and delivery of such materials has been taken by the Owner.

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When the Owner determines that the Contractor has completed the work under the contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, the Contractor will recommend that the Owner formally accept the contract, and immediately upon and after such acceptance by the Owner, the Contractor will not be required to perform any further work thereon and shall be relived of his contractual responsibilities for injury to persons or property which occurs after the formal acceptance of the project by the Owner.

14.3.3 Termination of the contract shall not relieve the surety of its obligation for any just claims arising out of the work performed. The total compensation to be paid to the Contractor shall be determined by the Owner on the basis of the following:

(a) The reasonable cost to the Contractor, without profit, for all work performed under the contract, including mobilization, demobilization and work done to secure the project for termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. Deductions will also be made, when the contract is terminated under the authority of Article 14.1 for the cost of materials damaged by the event causing termination.

When, in the opinion of the Owner, the cost of a contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing such work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.

(b) A reasonable allowance for profit on the cost of the work performed as determined under 14.1, provided the Contractor establishes to the satisfaction of the Owner that it is reasonably probable that the Contractor would have made a profit had the contract been completed and provided further, that the profit allowed shall in no event exceed 4 percent of said cost.

(c) The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the Owner or otherwise disposed of as directed by the Owner.

(d) A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the contract.

(e) A reasonable credit to the Owner for defective or incomplete work not corrected.

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All records of the Contractor and his subcontractors, necessary to determine compensation in accordance with the provisions of this Article 14.3, shall be open to inspection or audit by representatives of the Owner at all times after issuance of the notice that the contract is to be terminated and for a period of 3 years, thereafter, and such records shall be retained for that period.

After acceptance of the work by the Owner, the Owner may make payments on the basis of interim estimates pending issuance of a final estimate, when in Owner's opinion, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the final estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

The provisions of this Article 14.3 shall be included in all subcontracts.

If this contract is terminated by the Owner for cause, and it is later determined that the proper basis for a termination for cause did not exist, the termination shall be deemed to have been a termination for convenience and governed by the terms of this contract dealing with such termination.

If the contract is terminated by the Owner for cause or convenience, such termination shall neither act as a waiver by the Owner of its right to require the Contractor to correct defects in the work performed under the contract.

In the event of conflict between the termination provisions of this Article 14.3 and any other provision or the contract, this Article 14.3 shall prevail.

ARTICLE 15

NONDISCRIMINATION / LABOR CODE REQUIREMENTS

Contractor shall comply with the provisions of the State of California Labor Code Section 1735 which states the following:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

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ARTICLE 16

**NONDISCRIMINATION/NONPREFERENTIAL TREATMENT
APPLICABLE TO CONTRACTS FOR PUBLIC WORKS CONSTRUCTION
PROJECTS HAVING AN ENGINEERING COST ESTIMATE BASE BID
IN EXCESS OF \$50,000**

16.1 STATEMENT OF PURPOSES

It is the Policy of the City of San Jose and the Redevelopment Agency of the City of San Jose that no discrimination or preferences shall be permitted in the subcontracting of the City of San Jose and Redevelopment Agency construction contracts. Studies have demonstrated that there has been a pattern of discrimination against certain minority groups and women by contractors in the subcontracting of public works contracts. All contractors shall fully comply with Chapter 4.08 of the San Jose Municipal Code and shall not discriminate against or grant preferential treatment to any subcontractor on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in the performance of the City of San Jose and Redevelopment Agency contracts. Any contractor who so discriminates or gives preferences shall be deemed not to be a responsible bidder in accordance with City of San Jose Charter Section 1217.

16.2 REQUIREMENT

These provisions, entitled, "NONDISCRIMINATION/NONPREFERENTIAL TREATMENT APPLICABLE TO CONTRACTS FOR PUBLIC WORKS CONSTRUCTION PROJECTS HAVING A CITY OF SAN JOSE ENGINEERING COST ESTIMATE FOR THE BASE BID IN EXCESS OF \$50,000", are incorporated in and made part of the Special Provisions for such public works projects.

16.3 CONFLICT WITH APPLICABLE FEDERAL OR STATE LAW

In the event that a particular City or Redevelopment Agency public works contract is funded or required to be approved in whole or in part by the State or Federal government and any provision contained herein is inconsistent with any applicable state or federal statutes, rules or regulations, orders or controlling policies pertaining to such funding or approval, to the extent that any such provision is inconsistent, it shall not apply to the contract. To the extent a Federal project requires an MBE/WBE Program, the Program set forth in Resolution No. 4162, rather than this Nondiscrimination/Nonpreferential Treatment Program, shall be applicable.

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16.4 VIOLATION

Be aware that any Prime Contractor who discriminates or gives preferences is in violation of Chapter 4.08 of the San Jose Municipal Code. Any such violations, in addition to all other remedies set forth in the Municipal Code, are further subject to the provisions of the San Jose Municipal Code, Chapter 14.04 of Title 14, Part 4, Debarment of Contractors.

ARTICLE 17

PREVAILING WAGE

17.1 PREVAILING WAGE

The Contractor shall forfeit as penalty to the Owner, \$50.00 for each calendar day or portion thereof, for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed for any work done under the Contract by him or by any subcontractor under him, in violation of the provisions of the Labor Code of the State of California, and in particular, Section 1770 to 1780 thereof, inclusive. The general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to execute the Contract is set forth in full in the document referred to in the Notice to Contractors of the Specifications.

17.1.1 The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workman employed on the Project. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor pursuant to the requirements of Section 1775 of the Labor Code of the State of California.

17.1.2 The Owner will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the Agency on the Contract.

17.1.3 Notwithstanding any other provision of the Contract to the contrary, the general prevailing rate of wages in this locality for each craft, classification, or type of worker needed to execute the Contract for the Work (which rate includes

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employer payments for health and welfare, vacation, pension, travel time, and subsistence pay as provided for in Section 1773.8 of the Labor Code of the State of California, apprenticeship or other training programs authorized by Section 3093 of the Labor Code, and similar purposes) applicable to the work to be done for straight time, overtime, Saturday, Sunday and holiday work is that ascertained by the Director of the Department of Industrial Relations of the State of California and determined by the City Council of the City of San Jose by its Resolution No. 48383, copies of which rates are on file in the Office of the City Clerk and the Department of Public Works, and which shall be made available to any interested party on request, which rates are hereby made a part hereof, incorporated herein by reference as though fully set forth. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker employed on the Project.

17.2 PAYROLL RECORDS

The Contractor and each subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by the Contractor or subcontractor in connection with the Work. The payroll records shall be kept in accordance with the provisions of Section 1776 of the California Labor Code and Contractor and each subcontractor shall otherwise comply with all requirements of such Section 1776. With every payroll and Application for Payment (Section 9.3) following the issuance of the Notice to Proceed, Contractor shall send a copy of Contractor's certified payroll records for all work performed on the Project to the City of San Jose's Office of Equality Assurance, and a copy to the Owner. In the event Contractor does not submit all or a portion of such payroll records with each Application for Payment, Owner may withhold all or a portion of the funds requested under the Application for Payment, as set forth in Section 9.3 of these General Conditions.

END OF SECTION 00700